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ABSTRACT

Designed to aid those who provide technical assistance to school districts in the implementation of sex equity in educational programs, this document includes Office of Civil Rights (OCR) regulations and interpretations for enforcement with local educational agencies (LEAs); ramifications of the law for LEAs and State educational agencies (SEAs); questions and answers which LEA and SEA personnel would typically ask for each section of the regulatory statements; citations of additional references including current case law and additional Federal legislation; and a listing of the recommended documentation districts should have on hand should Title IX investigation be imminent. (Author/RLV)

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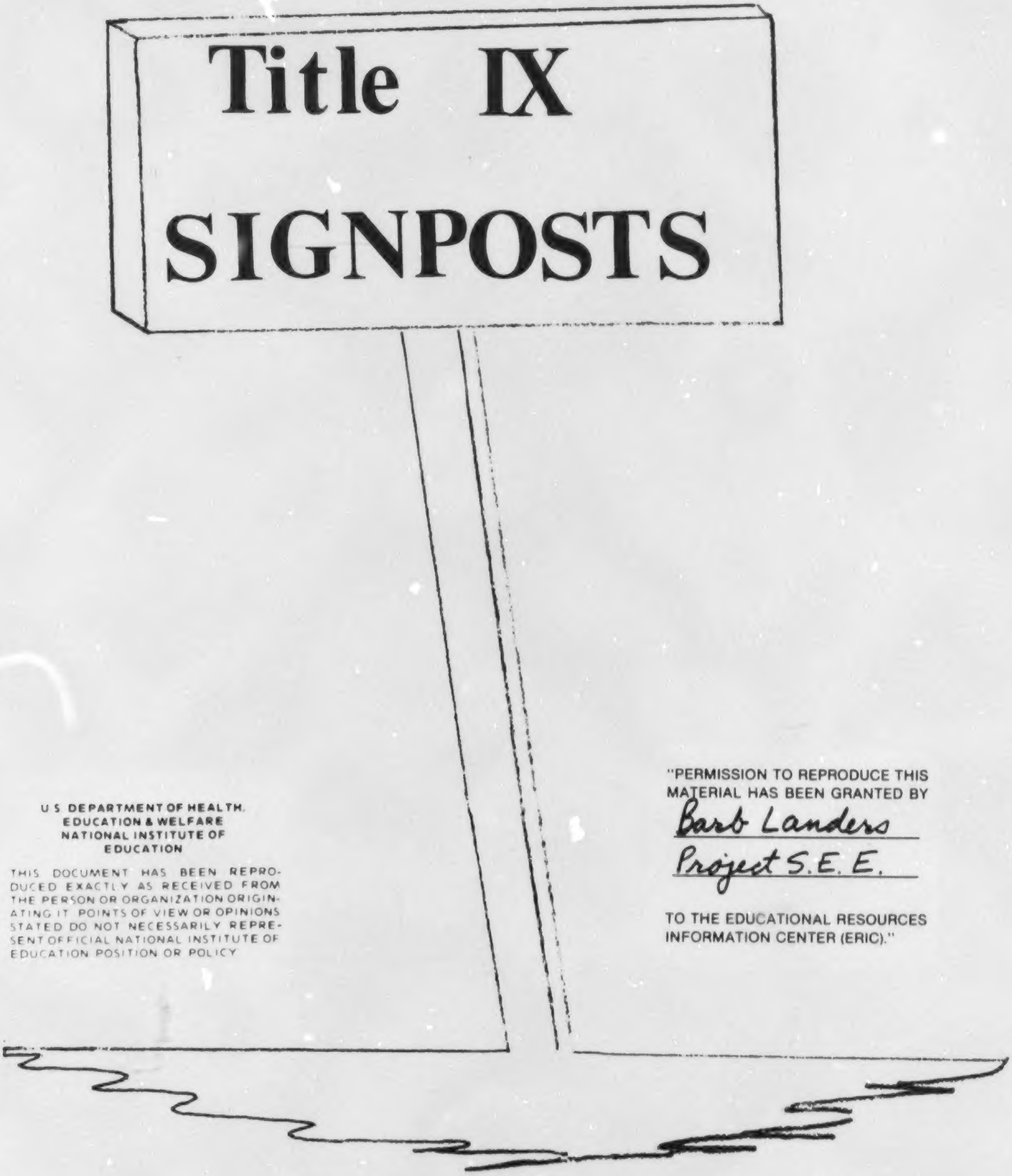

Title IX SIGNPOSTS

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UD020272

A TECHNICAL ASSISTANCE MANUAL

FOR SEA, LEA AND SDAC SEX EQUITY
PERSONNEL

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THE PURPOSE OF THIS BOOK

Ever since the passage of Title IX of the Education Amendments of 1972 and the subsequent development of the final regulations in 1975, people charged with the responsibility of implementing the concepts of sex equity in educational programs, K-12, have been seeking directions - indications of what is and is not acceptable - SIGNPOSTS to point the way not only toward compliance with the law, but also toward fulfillment of the spirit of the concepts of equity for all.

This book has been developed to assist SEA, LEA, SDAC, and perhaps even some OCR officials in their efforts as they go about giving technical assistance, prodding recalcitrant constituents, counseling the curious, and/or reviewing compliance efforts. The book includes six distinct parcels of information about pertinent sections of the final regulations. They are:

(1) Extracts from a 1975 OCR memorandum which outlined the enforcement steps OCR investigators would follow when undertaking reviews and/or dealing with alleged non-complinace activities of LEAs;

(2) Related sections of the final rules and regulations published in the June 4, 1975, Federal Register;

(3) Ramification statements applicable to the LEA and SEA readers of these regulations and OCR interpretations;

(4) Pertinent questions and answers LEA and SEA personnel would typically ask/seek for each section of the regulatory statements;

(5) Citations of additional references (current case law, additional Federal legislation, etc.) and/or areas of concern; and

(6) A listing of the recommended documentation districts should have on hand should Title IX investigation be imminent.

This information should provide anyone who needs to provide technical assistance (TA) to districts with a ready reference. It is not complete. The three-hole punched notebook format has been used so constant updating is possible should more OCR policy clarifications be forthcoming, should the users of this book want to add questions/answers they feel important, and should more case law be established. Pagination has also been developed in a flexible manner so new pages can be added as appropriate.

Users of this book are invited to help in the preparation of a more finished edition of this manual. Simply read and critique what is here, add what is considered missing, and send all responses in writing to the name found on the inside of the front cover of the document. Forms are provided in the back of the manual to assist in this process.

The move toward effective social change is always slow, at best. It is hoped that application of this document throughout California, Region IX, and perhaps even the nation, will provide a consistent base of knowledge which will facilitate a progressive pattern of positive change so all programs, policies, and practices in educational programs (K-12) will reflect equal opportunity for all.

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I. General Information

The Final Regulation implementing Title IX of the Education Amendments of 1972 became effective on July 21, 1975, 45 days after publication in the Federal Register on June 4. Although Title IX generally parallels Title VI of the Civil Rights Act of 1964, there are sections of the implementing regulation which are unique, namely: requirements for self-evaluation and for establishment of a grievance procedure, as well as a provision permitting separation on the basis of sex in those portions of sex education instruction dealing exclusively with human sexuality. In addition the statute exempts from coverage the admissions practices of nonvocational pre-school, elementary and secondary schools, the membership practices of the YMCA, YWCA, Girl Scouts, Boy Scouts, Camp Fire Girls, and certain other voluntary youth service organizations whose membership has traditionally been limited to members of one sex under the age of 19. Unlike Title VI, Title IX: applies only to educational programs and activities receiving Federal financial assistance; applies to treatment of all employees involved in educational programs and activities rather than only to those professional and paraprofessional employees directly responsible for the education of students; does not apply to military schools; and applies to educational institutions controlled by a religious organization to the extent compliance would be consistent with religious tenets. Furthermore, Title IX permits separation on the basis of sex in residential facilities and in other facilities in which maintenance of personal privacy is an issue. Congress also directed that the Title IX Regulation include "reasonable provisions considering the nature of particular sports."

These differences and statutory exemptions indicate that in eliminating sex discrimination in educational programs and activities, some traditional practices, such as separate nonvocational schools, may be continued; provisions may be made for maintaining personal privacy; practices dictated by religious tenets will be upheld; and actual sex differences, particulary in connection with physical performance, may be considered.

Subpart A—Introduction

§ 86.1 Purpose and effective date.

The purpose of this part is to effectuate title IX of the Education Amendments of 1972, as amended by Pub. L. 93–568, 88 Stat. 1855 (except sections 904 and 906 of those Amendments) which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution as defined in this part. This part is also intended to effectuate section 844 of the Education Amendments of 1974, Pub. L. 93–380, 88 Stat. 484. The effective date of this part shall be July 21, 1975.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682, as amended by Pub. L. 93–568, 88 Stat. 1855, and Sec. 844, Education Amendments of 1974, 88 Stat. 484, Pub. L. 93–380)

§ 86.2 Definitions.

As used in this part, the term—

(a) *"Title IX"* means title IX of the Education Amendments of 1972, Pub. L. 92–318, as amended by section 3 of Pub. L. 93–568, 88 Stat. 1855, except §§ 904 and 906 thereof; 20 U.S.C. §§ 1681, 1682, 1683, 1685, 1686.

(b) *"Department"* means the Department of Health, Education, and Welfare.

(c) *"Secretary"* means the Secretary of Health, Education, and Welfare.

(d) *"Director"* means the Director of the Office for Civil Rights of the Department.

(e) *"Reviewing Authority"* means that component of the Department delegated authority by the Secretary to appoint, and to review the decisions of, administrative law judges in cases arising under this Part.

(f) *"Administrative law judge"* means a person appointed by the reviewing authority to preside over a hearing held under this Part.

(g) *"Federal financial assistance"* means any of the following, when authorized or extended under a law administered by the Department:

(1) A grant or loan of Federal financial assistance, including funds made available for:

(i) The acquisition, construction, renovation, restoration, or repair of a building or facility or any portion thereof; and

(ii) Scholarships, loans, grants, wages or other funds extended to any entity for payment to or on behalf of students admitted to that entity, or extended directly to such students for payment to that entity.

(2) A grant of Federal real or personal property or any interest therein, including surplus property, and the proceeds of the sale or transfer of such property, if the Federal share of the fair market value of the property is not, upon such sale or transfer, properly accounted for to the Federal Government.

(3) Provision of the services of Federal personnel.

(4) Sale or lease of Federal property or any interest therein at nominal consideration, or at consideration reduced for the purpose of assisting the recipient or in recognition of public interest to be served thereby, or permission to use Federal property or any interest therein without consideration.

(5) Any other contract, agreement, or arrangement which has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty.

(h) *"Recipient"* means any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives or benefits from such assistance, including any subunit, successor, assignee, or transferee thereof.

(i) *"Applicant"* means one who submits an application, request, or plan required to be approved by a Department official, or by a recipient, as a condition to becoming a recipient.

(j) *"Educational institution"* means a local educational agency (L.E.A.) as defined by section 801(f) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 881), a preschool, a private elementary or secondary school, or an applicant or recipient of the type defined by paragraph (k), (l), (m), or (n) of this section.

(k) *"Institution of graduate higher education"* means an institution which:

(1) Offers academic study beyond the bachelor of arts or bachelor of science degree, whether or not leading to a certificate of any higher degree in the liberal arts and sciences; or

(2) Awards any degree in a professional field beyond the first professional degree (regardless of whether the first professional degree in such field is awarded by an institution of undergraduate higher education or professional education); or

(3) Awards no degree and offers no further academic study, but operates ordinarily for the purpose of facilitating research by persons who have received the highest graduate degree in any field of study.

(l) *"Institution of undergraduate higher education"* means:

(1) An institution offering at least two but less than four years of college level study beyond the high school level, leading to a diploma or an associate degree, or wholly or principally creditable toward a baccalaureate degree; or

(2) An institution offering academic study leading to a baccalaureate degree; or

(3) An agency or body which certifies credentials or offers degrees, but which may or may not offer academic study.

(m) *"Institution of professional education"* means an institution (except any institution of undergraduate higher education) which offers a program of academic study that leads to a first professional degree in a field for which there is a national specialized accrediting agency recognized by the United States Commissioner of Education.

(n) *"Institution of vocational education"* means a school or institution (except an institution of professional or graduate or undergraduate higher education) which has as its primary purpose preparation of students to pursue a technical, skilled, or semiskilled occupation or trade, or to pursue study in a technical field, whether or not the school or institution offers certificates, diplomas, or degrees and whether or not it offers fulltime study.

(o) *"Administratively separate unit"* means a school, department or college of an educational institution (other than a local educational agency) admission to which is independent of admission to any other component of such institution.

(p) *"Admission"* means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by a recipient.

(q) *"Student"* means a person who has gained admission.

(r) *"Transition plan"* means a plan subject to the approval of the United States Commissioner of Education pursuant to section 901(a)(2) of the Education Amendments of 1972, under which an educational institution operates in making the transition from being an educational institution which admits only students of one sex to being one which admits students of both sexes without discrimination.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

I. GENERAL INFORMATION

1. Suggested Action Steps for SEAs.

- Disseminate annual analysis of Title IX information, including new interpretations (Rules, Regulations, Case Law).

- Disseminate a list of the types of Federal funds that districts are receiving.

- Provide a list of agencies, groups, etc., that are available to help districts comply.

- Provide more specific information on and references to those to whom Title IX applies. (Not "educational institutions" as a catch-all phrase, but specify elementary, secondary, unified, community college, universities, vocational, etc.)

- Provide districts with a definition of terms. For example: Federal financial assistance
  Religious tenets
  Statutory exemptions
  Compliance officer
  Title IX coordinator

2. Suggested Action Steps for LEAs.

- Meet annually with all staff members to give them information on Title IX.

- Review, annually, the Federal assistance provided to the district.

- Review mandatory, as well as philosophical, reasons for compliance.

- Develop a procedure for disseminating policy regarding Title IX to all staff members.

3. Questions & Answers

3.1 Question:
What is Title IX?

Answer:
Title IX is that portion of the Education Amendments of 1972 which forbids discrimination on the basis of sex in educational programs or activities which receive Federal funds.

3.2 Question:
Who is covered by Title IX?

Answer: Virtually every college, university, elementary and secondary school and preschool is covered by some portion of the law. Many clubs and other organizations benefit from Federal funds for educational programs and activities and likewise are covered by Title IX in some manner.

3.3 Question:
Who is exempt from Title IX's provisions?

Answer: Congress has specifically exempted all military schools as well as religious schools to the extent that the provisions of Title IX would be inconsistent with the basic religious tenets of the school.

Not included with regard to admission requirements ONLY are private undergraduate colleges, non-vocational elementary and secondary schools and those public undergraduate schools which have been traditionally and continously single-sex since their establishment.

However, even institutions whose admissions are exempt from coverage must treat all students without discrimination once they have admitted members of both sexes.

3.4 Question:
It is said that "Title IX applies only to educational programs and activities receiving Federal financial assistance." What does this mean?

Answer:

In addition, any educational programs and activities benefiting from the receipt of - Federal financial assistance are considered by Title IX. Any educational institution that receives any type of Federal funds is covered by Title IX. (See P.L. 92-318-Sec. 901-902). This is inclusive of elementary, secondary, joint union, unified, community college and universities.

3.5 Question:

Has the law been changed in any way?

Answer:

There have been amendments, interpretations and clarification of some parts of the Title IX regulations such as:

Athletics- A discrepancy in coach/player ratio for male and female athletics can be considered when determining whether or not both sexes are receiving comparable coaching benefits[1]

Significant Assistance- Title IX prohibits schools from providing "significant assistance" to any organization that discriminates on the basis of sex in its treatment of students or employee. The Government identifies "significant assistance" on a case-by-case basis. Conferring "special privileges" on an organization, such as faculty sponsors, placement in student directory listings, use of campus bulletin board space or meeting rooms is "generally considered to be providing significant assistance."[2]

3.6 Question:

How can schools and colleges interested in a positive approach to Title IX deal with its provisions?

Answer:

To encourage each school and college to look at its policies in light of the law, the final regulation includes a self-evaluation provision. This requires that during the first year following receipt of Federal financial assistance the educational institution look at its policies and modify them to comply with the law and the regulations. This includes remedying the effects of any past discrimination.

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1. Letter to Missouri school superintendent from Taylor D. August, Director, OCR region VII, October 1977.

2. Letter to Nebraska Congressman from David S. Tatel, OCR Director, February 1978.

4. Case References

No case law at this time

5. Suggested documentation

5.1 SEAs

- Title IX Regulations - an Act - Sec. 901, 902 (PL 92-318)
- Copies of all communications sent to the field regarding Title IX

5.2 LEAs

- Title IX Regulations - an Act - Sec. 901, 902. (PL 92-318)
- Copies of agendas related to Title IX information sessions
- Copies of all communications provided to the district regarding Title IX

II. Self-Evaluation (Section 86.3(c)(d))

As the Department reviewed the nearly 10,000 comments submitted on the proposed Title IX Regulation, it became clear that sex discrimination in educational programs is often unconscious. Thus, perhaps the most important provision in the regulation is that each recipient by July 21, 1976, must have evaluated its practices and policies regarding admission and access of students to its educational programs and activities, treatment of students, and employment of both professional and nonprofessional staff working in its educational programs or activities.

A. Basic Principles

1. A recipient educational institution is required to:

    a. evaluate, in terms of the requirements of the final regulation, its policies and practices concerning admission of students; access of students to schools, programs, and activities; treatment of students and employment of staff working in its educational programs or activities;

    b. modify any policies or practices which do not or may not meet the requirements of the regulation;

    c. take appropriate remedial steps to eliminate the effects of any discrimination which resulted or may result from adherence to the policies subject to modification under b. above; and

    d. maintain on file for at least three years following completion of the evaluation, a description of any modifications made pursuant to b. and of any remedial steps taken pursuant to c.

2. The Department has not mandated any specific means for conducting the evaluation, as a method that might be appropriate in one situation may be less than effective in

RULES AND REGULATIONS

§ 86.3 Remedial and affirmative action and self-evaluation.

(a) *Remedial action.* If the Director finds that a recipient has discriminated against persons on the basis of sex in an education program or activity, such recipient shall take such remedial action as the Director deems necessary to overcome the effects of such discrimination.

(b) *Affirmative action.* In the absence of a finding of discrimination on the basis of sex in an education program or activity, a recipient may take affirmative action to overcome the effects of conditions which resulted in limited participation therein by persons of a particular sex. Nothing herein shall be interpreted to alter any affirmative action obligations which a recipient may have under Executive Order 11246.

(c) *Self-evaluation.* Each recipient education institution shall, within one year of the effective date of this part:

(i) Evaluate, in terms of the requirements of this part, its current policies and practices and the effects thereof concerning admission of students, treatment of students, and employment of both academic and non-academic personnel working in connection with the recipient's education program or activity;

(ii) Modify any of these policies and practices which do not or may not meet the requirements of this part; and

(iii) Take appropriate remedial steps to eliminate the effects of any discrimination which resulted or may have resulted from adherence to these policies and practices.

(d) *Availability of self-evaluation and related materials.* Recipients shall maintain on file for at least three years following completion of the evaluation required under paragraph (c) of this section, and shall provide to the Director upon request, a description of any modifications made pursuant to subparagraph (c)(ii) and of any remedial steps taken pursuant to subparagraph (c)(iii).

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

another. If you are asked by school officials to furnish guidance for the self-evaluation process, make clear that OCR is not prescribing any particular method, but you may nevertheless suggest that a district may wish to appoint an evaluation committee broadly representative of the community, including school board members, administrators, teachers, counselors, parents, and students. The evaluators should then identify those policies and practices affected by each section of the regulation and determine the extent to which both the policies and practices and their results meet the requirements of Title IX, identifying those which do not, and recommending appropriate modification of practices and policies as well as appropriate remedial steps. In addition you may wish to send as guidance a copy of Rosa D. Weiner's paper entitled "Title IX: One More Step Toward Equal Educational Opportunity" which was sent to each region in Title IX Bulletin #3, dated August 21 1975. You may also wish to review with school officials the basic principles and data to be analyzed in the ensuing sections of this manual.

B. Information to be obtained. (Items starred should be obtained prior to any on-site review.)

*1. Ask for a description of any modifications made in practices or policies and of any remedial steps taken as a result of the self-evaluation required by Section 86.3.

2. Keep in mind that recipients have up until one year to complete the self-evaluation. Thus, if you are told that the evaluation has not been completed, ask what steps have been taken to initiate the self-evaluation.

II. SELF-EVALUATION

1. Suggested Action Steps for SEAs.

- Review self-evaluation procedures for as many districts as possible and be available as a resource to assist them.
- Send out yearly reminder to schools to review their self-evaluation, remediation, and modification procedures.
- Issue a definition of the terms "remediation" and "modification".
- Provide districts with sample self-evaluation forms.
- Identify, for districts, procedures and aids for remediation and modification.
- Provide follow-up and monitoring procedures to assist districts.
- Work with school accreditation processes in order to eliminate sexist policies and practices.

2. Suggested Action Steps for LEAs.

- Do a new self-evaluation after the three year period for remediation and modification.
- Maintain all records and provide ongoing assistance for remediation and modification.
- Follow-up and monitor schools in the district that are in non-compliance.
- Follow-up on efforts to provide sex equity programs throughout the district.
- Provide students with self-evaluation results and request their input.
- Have a committee of teachers, students and parents assist in reviewing self-evualations and compliance efforts. Consider making this an ongoing function of already established advisory councils/committees.

3. Questions & Answers

3.1 Question:

Can self evaluations be thrown away after three years?

Answer:

This would not be a wise decision. If the OCR requests information on self-evaluation, it must be provided. The fact that a self-evaluation has been thrown away does not relieve the district from its responsibility to provide it.

Availability of self evaluation re: State Freedom of Information Act.

3.2 Question:

Where can a district that is out of compliance get assistance?

Answer:

There are any number of groups available to assist districts meet their compliance needs. These include:

State Department Title IX units
Sex Desegregation Assistant Centers
Title IV Training Institutes
Title IX Coordinators

3.3 Question:

Are there models of forms to be used for self-evaluation?

Answer:

Yes. The Resource Center for Sex Roles in Education has published a booklet called Complying With Title IX - Implementing Institutional Self Evaluation. In addition most school districts and state departments have examples of self evaluation instruments available.

3.4 Question:

Why do records need to be maintained?

Answer:

The law itself requires keeping records of remediation and modification of programs and policies for three years. However, all records should be maintained for as long as the district keeps other records. OCR or other groups may need information. If there is a challenge, actual evidence of what occurred is essential. Record keeping & maintenance is simply a good business practice.

3.5 Question:

What does a district do after it has remediated and modified its policies?

Answer:

After districts have completed a remediation and/or modification of programs, all records should be kept for referral and review. On a yearly basis these records should be reviewed to make sure programs are being implemented in accordance with Title IX requirements.

3.6 Question:

How often is a self evaluation required?

Answer:

The Title IX regulations state that "each recipient education institutions shall, within one year of the effective date of this part evaluate in terms of requirements of Title IX their education programs or activities." Abiding by the letter of the law, one self-evaluation is required within one year of the Title IX regulations being posted. If a new school district is created, it must complete a self evaluation.

4. Case References

No case law at this time.

5. Suggested Documentation/References

5.1 SEAs...references

- Shirley McCune & Martha Matthews, Resource Center on Sex Roles in Education - Complying With Title IX - Implementing Institutional Self-Evaluation
- McCune & Matthews - A Sample Workshop
- Guerrier, Charles - Title IX and The Achievement of Equal Educational Opportunity
- 20 USC 1682 (902)
- Copies of sample self evaluations

5.2 LEAs

- McCune & Matthews - Implementing Institutional Self Evaluation
- McCune & Matthews - Implementing Title IX and A Sample Workshop
- Records of all self evaluation efforts
- Records of all remediation attitudes taken as a result of the self evaluation

III. Designation of Responsible Employee and Adoption of a Grievance Procedure (Section 86.8)

A. Basic Principles

1. The recipient is required to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX, including investigation of complaints alleging noncompliance with or actions which would be prohibited by Title IX.

2. The recipient is required to notify all students and employees of the name(s), office address(es) and telephone number(s) of the employee(s) designated under II.A.1.

3. The recipient is required to adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging actions that are prohibited by the regulation. The Department has not and will not issue guidelines or standards for grievance procedures. The recipient must decide for itself the procedures appropriate for prompt and equitable resolution of complaints. OCR's concern is only whether procedures have been established, not with the form or substnce of the procedures.

B. Information to be obtained. (Items starred should be obtained prior to any on-site review.)

*1. Copies of notice(s) sent to students and employees stating the name(s), business address(es) and telephone number(s) of the employee(s) designated to coordinate the recipient's compliance efforts.

*2. Copy of the publication of the recipient's grievance procedures.

§ 86.8 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to such recipient alleging its noncompliance with this part or alleging any actions which would be prohibited by this part. The recipient shall notify all its students and employees of the name, office address and telephone number of the employee or employees appointed pursuant to this paragraph.

(b) *Complaint procedure of recipient.* A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

III. DESIGNATION OF RESPONSIBLE EMPLOYEE AND ADOPTION OF A GRIEVANCE PROCEDURE

1. Suggested Action Steps for SEAs.

   - Act as a resource for developing a grievance procedure.
   - Have a directory of all the Title IX coordinators.
   - Refer districts to peer districts with Title IX grievance procedures that are working.
   - Include intensive coverage of grievance procedures in all Title IX related conferences held throughout the state.
   - Identify those districts that have had little or no contact with Title IX and provide them with a conference or the specific assistance needed.
   - Provide technical assistance to districts in need of interpreting a grievance.

2. Suggested Action Steps for LEAs.

   - Have a separate Title IX grievance procedure for students, teachers and classified personnel.
   - Identify the Title IX representative as either a "coordinator" or "compliance officer".
   - Have/develop a job description for Title IX coordinator.
   - Maintain a record of all grievance problems and solutions.
   - Provide explicit instructions on grievance procedures for students and parents regularly.
   - Identify the responsibilities of the Title IX coordinator to all district personnel.
   - Appoint someone at each school to serve as Title IX representative.
   - Provide Title IX coordinator with the status of representative to/of the superintendent.

3. Questions & Answers

3.1 Question:

Is there a difference between a Title IX coordinator and a Title IX compliance officer?

Answer:

Yes. A Title IX coordinator is an employee designated by the recepient to coordinate its efforts in compling with Title IX. Duties include investigation of any complaints alleging sex discrimination.

A compliance officer is one who enforces compliance, namely the district superintendent, or board of education.

3.2 Question:

Must records be kept of problems and solutions on each grievance?

Answer:

No, but it would be very wise to do so. The failure to maintain records often poses the problem of a complete reiteration of each case, also inconsistent decisions in identical fact situation can occur without records, whereas the retention of records may help alleviate the next issue.

3.3 Question:

Is there a need for a Title IX grievance procedure over and above the district grievance procedure?

Answer:

The law specifically states that "A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolutions of complaints alleging sex discrimination". If this is covered in the district grievance procedure, then a separate one need not be adopted. The grievance procedure should include a conflict of interest clause.

3.4 Question:

Who should be the Title IX coordinator?
Who should be the Title IX compliance officer?

Answer:

The Title IX coordinator should be a person at the administrative level, responsible to the superintendent. One with "clout" to act when needed, and coordinate all activities.

The Title IX compliance officer may be the superintendent or a representative of the superintendent who is responsible for compliance with the law.

3.5 Question:

Should there be a separate grievance procedure for students?

Answer:

Yes. In most instances a grievance for adults is too sophisticated for students. The grievance procedures for students should allow a parent/guardian to appear on behalf of a student or as an interested party.

3.6 Question:

Can a community person file a grievance against a school district?

Answer:

A community person may file a complaint with the Office of Civil Rights but not a school grievance, unless there is a local option permitting it.

4. Case References

No case law at this time

5. Suggested Documentation/References

5.1 SEAs

- Title IX Regulations - Sec. 86.8
- ASCA, Title IX Committee - Grievance Procedures
- Steiger, Fink and Kosecoff, Inc. - What To Do With Your Grievance
- Samples of grievance procedures
- McCune & Matthews - A Grievance Procedure
- Samples of incidents resolved through application of the grievance process

5.2 LEAs

- Title IX Regulations - Sec. 86.8
- Steiger, Fink and Kosecoff, Inc. - What To Do With Your Grievance
- ASCA, Title IX Committee - Grievance Procedure
- McCune & Matthews - A Grievance Procedure
- Copies of grievance procedures currently in use
- All records related to grievances which have been resolved as a result of applying the grievance process

IV. Dissemination of Policy (Section 86.9)

§ 86.9 Dissemination of policy.

(a) *Notification of policy.* (1) Each recipient shall implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in the educational programs or activities which it operates, and that is required by title IX and this part not to discriminate in such a manner. Such notification shall contain such information, and be made in such manner, as the Director finds necessary to apprise such persons of the protections against discrimination assured them by title IX and this part, but shall state at least that the requirement not to discriminate in education programs and activities extends to employment therein, and to admission thereto unless Subpart C does not apply to the recipient, and that inquiries concerning the application of title IX and this part to such recipient may be referred to the employee designated pursuant to § 86.8, or to the Director.

(2) Each recipient shall make the initial notification required by paragraph (a)(1) of this section within 90 days of the effective date of this part or of the date this part first applies to such recipient, whichever comes later, which notification shall include publication in: (i) Local newspapers; (ii) newspapers and magazines operated by such recipient or by student, alumnae, or alumni groups for or in connection with such recipient; and (iii) memoranda or other written communications distributed to every student and employee of such recipient.

(b) *Publications.* (1) Each recipient shall prominently include a statement of the policy described in paragraph (a) of this section in each announcement, bulletin, catalog, or application form which it makes available to any person of a type described in paragraph (a) of this section, or which is otherwise used in connection with the recruitment of students or employees.

(2) A recipient shall not use or distribute a publication of the type described in this paragraph which suggests, by text or illustration, that such recipient treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by this part.

(c) *Distribution.* Each recipient shall distribute without discrimination on the basis of sex each publication described in paragraph (b) of this section, and shall apprise each of its admission and employment recruitment representatives of the policy of nondiscrimination described in paragraph (a) of this section, and require such representatives to adhere to such policy.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

A. Basic Principles

1. Pre-school, elementary and secondary nonvocational schools and other organizations conducting educational programs or activities benefiting from Federal financial assistance must notify the following that they do not discriminate on the basis of sex in the educational programs or activities they operate and that they are required by Title IX not to discriminate on the basis of sex.

    a. applicants for employment;

    b. student and parents of students;

    c. employees;

    d. sources of referral of applicants for employment;

    e. all unions or professional organizations holding collective bargaining or professional agreements with recipients.

2. In addition to the above, recipients operating vocational schools must notify:

    a. applicants for admission;

    b. sources of referral of applicants for admission.

3. At a minimum, the notification must contain the following:

    a. a statement that the requirement not to discriminate in education programs or activities extends to the recipient's employment practices and policies;

    b. in the case of a recipient operating a vocational school, a statement, in addition, that the requirement not to discriminate extends to its admission practices and policies;

    c. a statement that inquiries about the application of its nondiscriminatory policy may be referred to the employee(s) designated to coordinate its compliance efforts or to the Director, Office for Civil Rights.

4. The initial notifiction must be made within 90 days of the effective date of the regulation (by October 19, 1975) or within 90 days of an initial application for Federal financi assistance, whichever date is later.

5. Recipients must include the initial notification in the following:

    a. local newspapers;

    b. newspapers and magazines operated by the recipient or by student, alumni, and alumnae groups;

    c. memoranda or other written communications distributed annually to every student and employee.

6. In any announcement, bulletin, catalog, or application form made available by the recipient to the persons or organizations listed under IV. A. 1 and 2., a statement of its nondiscriminatory policy must be published. Included in the above would be student and faculty or employee handbooks or manuals.

7. A recipient is prohibited from using or distributing publications of the type described under IV. 6. which suggest by text or illustration that applicants (in the case of vocational schools), students or employees are treated differently on the basis of sex.

8. Recipients are required to distribute without discrimination on the basis of sex the publications outlined under IV. A. 6., and are required to inform each of their employment admission (in the case of vocational schools) and recruitment representatives, including counselors or student advisors, and personnel officers, of their nondiscriminatory policy and require such representatives to adhere to such policy.

b. Information to be obtained. (Items starred should be obtained prior to any on-site review.)

*1. Copies of notification sent to the persons and groups listed under IV. A. 1. and 2.

*2. Copies of any public information--bulletins, announcements, catalogs, course descriptions, handbooks for students, employees or parents--as described in IV. A. 6.

*3. Copies of the information given to employment and admission representatives, including counselors or student advisors and personnel officers, about the nondiscriminatory policy.

4. On-site, interview counselors or student advisors and personnel officer's to determine if they know and understand what Title IX is, what the recipient's policy is, and what steps, if any, have been taken to implement the recipient's policy. It is, of course, possible that the recipient's policies and practices were already nondiscriminatory on the basis of sex and that no new steps are necessary to assure compliance.

IV. DISSEMINATION OF POLICY

1. Suggested Action Steps for SEAs.

- Remind LEAs yearly to disseminate the sex descrimination ploicy.
- Request copy of policy on Title IX. from LEAs.
- Distribute a newsletter regarding Title IX activities to Title IX coordinators and superintendents and other interested parties.
- Provide technical assistance by reviewing bulletins, catalogs, application forms, etc. for sex stereotyping and sex bias.

2. Suggested Action Steps for LEAs.

- Insure that each new employee/student receives notification about the district Title IX policies.
- Provide policy statements in the native languages of the population.
- Provide in-service to unions and other outside agencies on materials to be distributed at school sites.
- Provide on-going review of district bulletins, catalogs and Board policy for Title IX compliance.
- Review school-site yearbook, catalogs and bulletins.
- Provide yearly reminder of policy statement, to be placed in catalogs, etc.
- Provide newsletter to district staff regarding exemplary programs, new interpretations, etc.

3. Questions & Answers

3.1 Question:

How many times must the policy dissemination be made to teachers, students, etc.?

Answer:

All school personnel must receive notification of policy within 90 days of the publication of the act. After that time all new employees, students, etc., must continuously receive such notification upon entering the institution.

3.2 Question:

If a new Title IX coordinator is appointed after a year or two must all the students and employees be notified again?

Answer:

Yes. The appointment of a new coordinator must be disseminated so that students and teachers know on whom they are going to call for assistance

4. Case Reference

No case law at this time

5. Suggested Documentation/References

5.1 SEAs

- Title IX Regulations - Sec. 86.9
- Copies of LEA notices used to disseminate the Title IX information
- Records of notification to LEAs regarding the legal requirements they must follow

5.2 LEAs

- Title IX Regulations - Sec. 86.9
  OCR Implementation Manual
- Copies of all notices sent out in the district

V. Membership Practices of Certain Organizations (Section 86.14) and Assistance to Organizations, Agencies or Persons Which Discriminate on the Basis of Sex (Section 86.31(b)(7)). See also Section 86.37(a)(2).)

A. Basic Principles

1. Recipients at the elementary and secondary school level may sponsor, furnish facilities to, or otherwise support the activities of certain organizations in which participation may be limited to members of one sex. Several organizations have been specified, namely: YMCA, YWCA, Girl Scouts, Boy Scouts, and Camp Fire Girls.

2. Certain other voluntary youth service organizations with sex-restrictive membership policies may also be sponsored if:

   a. they are exempt from taxation under Section 501(a) of the Internal Revenue Code of 1954; AND

   b. their membership has been traditionally limited to members of one sex; AND

   c. their membership is limited principally to persons of less than nineteen years of age.

   All three of the above conditions must be met. While it is clear that recipients may sponsor or aid the Brownies and Cub Scouts, it is not clear that they may sponsor or aid a single-sex Key Club. Elementary and secondary schools may not sponsor or support chapters of single-sex sororities or fraternities, whether social or honorary; single-sex honor societies, vocational, professional, or business clubs.

3. Recipients which are pre-school, elementary or secondary schools may not provide significant assistance to organizations, agencies, or persons not covered under V. A. 1. and 2. which discriminate on the basis of sex in providing any aid, benefits or service to students or employees. Significant assistance must be determined by OCR on a case by case basis. The following are some examples of significant and insignificant assistance.

§ 86.14 Membership practices of certain organizations.

(a) *Social fraternities and sororities.* This part does not apply to the membership practices of social fraternities and sororities which are exempt from taxation under Section 501(a) of the Internal Revenue Code of 1954, the active membership of which consists primarily of students in attendance at institutions of higher education.

(b) *YMCA, YWCA, Girl Scouts, Boy Scouts and Camp Fire Girls.* This part does not apply to the membership practices of the Young Men's Christian Association, the Young Women's Christian Association, the Girl Scouts, the Boy Scouts and Camp Fire Girls.

(c) *Voluntary youth service organizations.* This part does not apply to the membership practices of voluntary youth service organizations which are exempt from taxation under Section 501(a) of the Internal Revenue Code of 1954 and the membership of which has been traditionally limited to members of one sex and principally to persons of less than nineteen years of age.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; Sec. 3(a) of P.L. 93-568, 88 Stat. 1862, amending Sec. 901)

§ 86.31 Education programs and activities.

(b) *Specific prohibitions.* Except as provided in this subpart, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:

(7) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees;

§ 86.37 Financial assistance.

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, in providing financial assistance to any of its students, a recipient shall not: (1) On the basis of sex, provide different amount or types of such assistance, limit eligibility for such assistance which is of any particular type or source, apply different criteria, or otherwise discriminate; (2) through solicitation, listing, approval, provision of facilities or other services, assist any foundation, trust, agency, organization, or person which provides assistance to any of such recipient's students in a manner which discriminates on the basis of sex; or (3) apply any rule or assist in application of any rule concerning eligibility for such assistance which treats persons of one sex differently from persons of the other sex with regard to marital or parental status.

a. The following is an example of significant assistance:

---A school district distributes information about a health insurance plan and makes payroll deductions for employees enrolling in it. The plan requires those wishing coverage of pregnancy and related conditions to pay higher premiums than others who receive coverage for treatment of all other temporary disabilities. In this case the school district would be serving as an agent for an agency which discriminates in the provision of benefits to employees.

b. The following is an example of insignificant assistance:

---A school district regularly permits use, at no cost, of unused classrooms during school days and auditoriums during the evening and on weekends to community organizations. Among the organizations using the auditorium is the Junior Chamber of Commerce which is open only to males. Although the district's female employees are excluded from the aid, benefits and services membership in the Jay Cees might bestow, the assistance provided by the school district is **not significant.**

B. Information to be obtained. (It is not necessary to seek information on this issue prior to an on-site review. Where problems are identified on-site, the following data should be collected.)

1. Names of any chapters of outside organizations whose membership is limited to students of one sex which use school facilities and in which students participate.

2. For each organization listed:

   a. Does the school provide a faculty advisor?

   b. What is the purpose of the organization?

   c. Is the organization exempt from taxation under Section 501(a) of the Internal Revenue Code of 1954?

d. Is there any age limit for membership? If there is no age limit, what is the age range of the membership in the organization nationally?

e. What role do school officials play in selecting members or certifying eligibility for membership?

3. Names of any organizations whose membership is limited to persons of one sex which use school facilities.

4. For each organization listed:

   a. What facilities are used and when?

   b. Does the organization pay a fee for the use of the facilities?

   c. Are the activities for which the organization uses school facilities open to persons of both sexes?

   d. Does the recipient provide staff for the organization's activities?

   e. For what kinds of activities are the facilities used by the organization?

5. Names of any organizations which give awards, prizes or scholarships to the recipient's students or employees which are restricted to persons of one sex.

6. For the awards, prizes, etc. listed above, do school officials:

   a. announce or post notices announcing opportunities to apply?

   b. nominate persons to be considered?

   c. otherwise help select persons to receive such awards, etc.?

7. On-site, determine by reviewing end of year school newspapers, awards day programs, graduation programs, the prizes, awards and scholarships given and whether they appear to be sex-restrictive.

8. Refer also to Section XV of this manual, entitled "Honors and Awards."

V. MEMBERSHIP PRACTICES OF CERTAIN ORGANIZATION, AGENCIES OR PERSONS WHICH DISCRIMINATE ON THE BASIS OF SEX.

1. Suggested Action Steps for SEAs.
   - Review state mandates.
   - List state sponsored organizations (interscholastic governance, HEROS, 4-H, etc.).
   - List exempt organizations.
   - Identify other organizations limited to single sex.
   - Determine whether the organizations identified above meet the criteria for exemption.
   - Recommend compliance procedures for those who do not meet the criteria for exemption, but who persist (Senior girls' club, etc.).
   - Disseminate all information to LEAs.
2. Suggested Action Steps for LEAs.
   - Review Board policies/procedures.
   - Develop a "use of facilities form" to include a statement of assurance that the organization seeking to use the facilities is not discriminatory in relation to Title IX.
   - List LEA sponsored organizations which are in compliance.
   - List exempt organizations.
   - Identify other organizations limited to a single sex.
   - Determine whether the organization identified above meets the criteria for exemption.
   - Recommend compliance procedures for those who do not meet the criteria for exemption or disband the activity.

3. Question & Answers

3.1 Question:

Does the law cover social sororities and fraternities?

Answer:

Congress has exempted the membership practices of social fraternities and sororities at the postsecondary level, the Boy Scouts, Girl Scouts, Camp Fire Girls, Y.W.C.A., Y.M.C.A., and certain voluntary youth services organizations. However, if any of these organizations receive Federal funds and are open to nonmembers, those programs must be operated in a nondiscriminatory manner.
operated in a nondiscriminatory manner.

3.2 Question:

What would happen if a single sex-community organization asked to use a LEA facility?

Answer:

LEA should review membership requirements and if convinced the requirements are discriminatory the LEA should not provide significant assistance.

3.3 Question:

How can school districts establish memorial scholarships that do not promote discrimination?

Answer:

Establish guidelines so that neither boys nor girls are excluded from nomination.

3.4 Question:

Can school districts accept scholarship funds and/or donations from a single-sex organization?

Answer:

Yes, as long as there are no discriminatory restrictions on the scholarships and conditions on the use of the funds.

3.5 Question:

Can school districts be the recipient of scholarship funds that are designated for a member of one sex?

Answer:

A district cannot participate in the selection of a scholarship receipient under discriminatory conditions.

3.6 Question:

Should the district distribute materials from single-sex organizations?

Answer:

Not if the stated policies or practices of the organization are discriminatory.

3.7 Question:

What if the SEA or LEA policies are in conflict with the Federal regulations?

Answer:

The Federal regulations supercede state and local laws and policies.

3.8 Question:

What should be included in the assurance form for organizational use of school facilities?

Answer:

A statement indicating the organization is aware of Title IX requirements.

3.9 Question:

What represents significant assistance in discrimination on the basis of sex?

Answer:

O.C.R. determines each instance on a case by case basis. Typically, providing meeting space or distribution of pamphlets to sexist groups not exempted by O.C.R. would be providing significant assistance and would thus be an undesirable practice.

4. Case References

No case law at this time.

5. Suggested Documentation

5.1 SEAs.

- Lists of clubs/groups known to be in compliance
- Lists of clubs/groups known to be in non-compliance
- Records of instances this information was passed on tbe the field
- Lists of criteria to be used to determine the compliance or non-compliance of organizations

5.2 LEAs.

- Lists of clubs/organizations which typically use facilities
- Lists of clubs/organizations which have been denied use of facilities and the rationale applied
- Lists of criteria used to determine the status of various groups

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

§ 86.21 Admission.

(a) *General.* No person shall, on the basis of sex, be denied admission, or be subjected to discrimination in admission, by any recipient to which this subpart applies, except as provided in §§ 86.16 and 86.17.

(b) Specific prohibitions. (1) In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which this Subpart applies shall not:

(i) Give preference to one person over another on the basis of sex, by ranking applicants separately on such basis, or otherwise;

(ii) Apply numerical limitations upon the number or proportion of persons of either sex who may be admitted; or

(iii) Otherwise treat one individual differently from another on the basis of sex.

(2) A recipient shall not administer or operate any test or other criterion for admission which has a disproportionately adverse effect on persons on the basis of sex unless the use of such test or criterion is shown to predict validly success in the education program or activity in question and alternative tests or criteria which do not have such a disproportionately adverse effect are shown to be unavailable.

(c) *Prohibitions relating to marital or parental status.* In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which this subpart applies:

(1) Shall not apply any rule concerning the actual or potential parental, family, or marital status of a student or applicant which treats persons differently on the basis of sex;

(2) Shall not discriminate against or exclude any person on the basis of pregnancy, childbirth, termination of pregnancy, or recovery therefrom, or establish or follow any rule or practice which so discriminates or excludes;

(3) Shall treat disabilities related to pregnancy, childbirth, termination of pregnancy, or recovery therefrom in the same manner and under the same policies as any other temporary disability or physical condition; and

(4) Shall not make pre-admission inquiry as to the marital status of an applicant for admission, including whether such applicant is "Miss" or "Mrs." A recipient may make pre-admission inquiry as to the sex of an applicant for admission, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.22 Preference in admission.

A recipient to which this subpart applies shall not give preference to applicants for admission, on the basis of attendance at any educational institution or other school or entity which admits as students or predominantly members of one sex, if the giving of such preference has the effect of discriminating on the basis of sex in violation of this subpart.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

VI. Vocational Schools -- Admission and Recruitment.

(Subpart C, Sections 86.21 - 86.23. Note that in addition to these sections, all other sections of the Regulation and of this manual apply to vocational schools. See also Subpart B, Sections 86.16 and 86.17 and Subpart D, Section 86.35(a).)

A. Basic Principles

1. Recipient vocational schools may not deny admission or discriminate in admission on the basis of sex.

2. In determining whether a person satisfies any policy or criterion for admission, or in offering admission, vocational schools may not:

    a. give preference to one person over another on the basis of sex, by ranking applicants separately on such basis, or otherwise;

    b. apply numerical limitations (quotas) on the number or proportion of persons of either sex who may be admitted;

    c. have different admissions criteria on the basis of sex.

3. Vocational schools may not use tests or other admissions criteria which have a disproportionately adverse effect on persons on the basis of sex unless the use of such tests or criteria are shown to predict validly success in the programs or activities in question and alternative tests or criteria which do not have such a disproportionately adverse effect are shown to be unavailable.

4. In determining whether a person is eligible for admission or in offering admission, a vocational school may not apply any rule concerning the actual or potential parental, family, or marital status of a student or applicant which treats persons differently on the basis of sex.

5. In addition, it may not discriminate against or exclude any person on the basis of pregnancy, childbirth, termination of pregnancy, or recovery therefrom, nor follow any rule which so discriminates or excludes.

§ 86.23 Recruitment.

(a) *Nondiscriminatory recruitment.* A recipient to which this subpart applies shall not discriminate on the basis of sex in the recruitment and admission of students. A recipient may be required to undertake additional recruitment efforts for one sex as remedial action pursuant to § 86.3(a), and may choose to undertake such efforts as affirmative action pursuant to § 86.3(b).

(b) *Recruitment at certain institutions.* A recipient to which this subpart applies shall not recruit primarily or exclusively at educational institutions, schools or entities which admit as students only or predominantly members of one sex, if such actions have the effect of discriminating on the basis of sex in violation of this subpart.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§§ 86.24–86.30 [Reserved]

Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited

§ 86.16 Educational institutions eligible to submit transition plans.

(a) *Application.* This section applies to each educational institution to which Subpart C applies which:

(1) Admitted only students of one sex as regular students as of June 23, 1972; or

(2) Admitted only students of one sex as regular students as of June 23, 1965, but thereafter admitted as regular students, students of the sex not admitted prior to June 23, 1965.

(b) *Provision for transition plans.* An educational institution to which this section applies shall not discriminate on the basis of sex in admission or recruitment in violation of Subpart C unless it is carrying out a transition plan approved by the United States Commissioner of Education as described in § 86.17, which plan provides for the elimination of such discrimination by the earliest practicable date but in no event later than June 23, 1979.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

6. Vocational schools may not make pre-admission inquiries as to the marital status of an applicant for admission. As a result, applicant forms cannot ask for marital status, "Miss" or "Mrs." designations.

7. Preference may not be given to applicants who previously attended another school which enrolled students of one sex or predominantly one sex if the giving of such preference has a discriminatory effect on admission on the basis of sex.

8. Recruitment primarily or exclusively at educational institutions which enroll students of one sex or predominantly one sex is prohibited if such action would have the effect of discriminating on the basis of sex.

9. Where vocational schools have previously limited their enrollment exclusively or predominantly to students of one sex, they are required to take specific steps designed to encourage individuals of the previously excluded sex to apply for admission. Such steps must include instituting recruitment programs which emphasize a commitment to enrolling students of the previously excluded sex.

B. Information to be obtained. (Items starred should be obtained prior to any on-site review.)

*1. The number of students admitted by sex for the following academic years:

   a. 1964-65

   b. if students of both sexes were not admitted in 1964-65, the number of students admitted by sex the first year after that date in which students of both sexes were enrolled.

   c. the current and each of the preceding two academic years.

*2. A statement of the admissions criteria applied for each of the years listed above.

§ 86.17 Transition plans.

(a) *Submission of plans.* An institution to which § 86.16 applies and which is composed of more than one administratively separate unit may submit either a single transition plan applicable to all such units, or a separate transition plan applicable to each such unit.

(b) *Content of plans.* In order to be approved by the United States Commissioner of Education, a transition plan shall:

(1) State the name, address, and Federal Interagency Committee on Education (FICE) Code of the educational institution submitting such plan, the administratively separate units to which the plan is applicable, and the name, address, and telephone number of the person to whom questions concerning the plan may be addressed. The person who submits the plan shall be the chief administrator or president of the institution, or another individual legally authorized to bind the institution to all actions set forth in the plan.

(2) State whether the educational institution or administratively separate unit admits students of both sexes, as regular students and, if so, when it began to do so.

(3) Identify and describe with respect to the educational institution or administratively separate unit any obstacles to admitting students without discrimination on the basis of sex.

(4) Describe in detail the steps necessary to eliminate as soon as practicable each obstacle so identified and indicate the schedule for taking these steps and the individual directly responsible for their implementation.

(5) Include estimates of the number of students, by sex, expected to apply for, be admitted to, and enter each class during the period covered by the plan.

(c) *Nondiscrimination.* No policy or practice of a recipient to which § 86.16 applies shall result in treatment of applicants to or students of such recipient in violation of Subpart C unless such treatment is necessitated by an obstacle identified in paragraph (b)(3) of this section and a schedule for eliminating that obstacle has been provided as required by paragraph (b)(4) of this section.

(d) *Effects of past exclusion.* To overcome the effects of past exclusion of students on the basis of sex, each educational institution to which § 86.16 applies shall include in its transition plan, and shall implement, specific steps designed to encourage individuals of the previously excluded sex to apply for admission to such institution. Such steps shall include instituting recruitment programs which emphasize the institution's commitment to enrolling students of the sex previously excluded.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.35 Access to schools operated by L.E.A.s.

A recipient which is a local educational agency shall not, on the basis of sex, exclude any person from admission to:

(a) Any institution of vocational education operated by such recipient; or

(b) Any other school or educational unit operated by such recipient, unless such recipient otherwise makes available to such person, pursuant to the same policies and criteria of admission, courses, services, and facilities comparable to each course, service, and facility offered in or through such schools.

(Sections 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

*3. The names, including form and date of publication, of any tests employed during the past two years to determine eligibility for admission. For each year, what was the average and median score obtained by male and female applicants?

4. The names and enrollment by sex of all educational institutions at which recruitment efforts are directed;

5. The names and enrollment by sex of all institutions which regularly refer applicants for admission;

6. Copies of application forms used for the past two years;

*7. Copies of recruitment brochures and other information distributed to prospective applicants and enrollees;

*8. Copies of course catalogs, bulletins or other course descriptions circulated for the past two years;

*9. In the case of a vocational school which previously admitted students of only one sex, a description of the specific steps it is taking to recruit and enroll students of the previously excluded sex.

10. Interview admissions and recruitment personnel to find out what further steps they are planning to recruit and enroll students of both sexes and what problems they have found or foresee in doing so.

11. Interview counselors in institutions which commonly refer students for admission to determine whether they have received and are aware of the vocational school's nondiscriminatory policy.

12. Examine a sampling of applicant files for the past two years to determine the extent to which admissions criteria have been consistently applied to male and female applicants.

VI. VOCATIONAL EDUCATION

1. Suggested Action Steps for SEAs.

- Provide LEAs with examples to alert them to sex biased practices.
- Disseminate findings on cases and rulings.
- Provide technical assistance as requested or as need is determined.
- Identify and disseminate information on exemplary programs.
- Collaborate with other divisions within the State Department of Education, the Community College system, and other higher educational institutions to maximize consistency in interpretation and implementation of Title IX.
- Check all state laws regarding vocational education programs, policies, procedures to see that they are in full compliance with Title IX and Title II of the 1976 Vocational Education Amendments.

2. Suggested Action Steps for LEAs.

- Refer to the regulations and insure policies, procedures, and actual practices are in compliance with provisions - 86.21, 86.22 and 86.23.
- Take remedial action as needed to bring the institution into compliance.
- Request assistance in evaluation and remediation activities from agencies such as OCR, State Department of Education, and Sex Desegregation Centers.
- Take remedial actions such as:

  offering inservice training for recruiters, admission officers, other administrators;

  altering classroom environment to encourage enrollment of student in non-traditional classes;

  looking at physical facilities to insure school does accommodate both sexes;

  eliminating sex bias in testing;

  insuring that counseling is sex affirmative.

3. Questions & Answers

3.1 Question:

May a vocational school limit enrollment of members of one sex because of limited availability of job opportunities for members of that sex?

Answer:

No. Further, a school may not assist a discriminatory employer by referral of students or in any other manner.

3.2 Question:

What is a vocational school?

Answer:

The reg 86.2 N definition is "institution of vocational education".

3.3 Question:

Why is subpart C included?

Answer:

Subpart C extends the provisions of Title IX to "institutions of vocational education." OCR excludes proprietary institutions from review, but they must assure funding agencies of their compliance with Title IX if they are to receive Federal funds.

3.4 Question:

Does a vocational school have to avoid cooperation with other agencies that discriminate?

Answer:

Yes.

3.5 Question:

How does a vocational school deal with sexist tradition in training employment?
(unions, placement, hiring, etc.)

Answer:

It must not perpetuate the discrimination. It should provide additional support to people in the non-traditional occupational training.

4. Case References

No case law at this time

5. Suggested Documentation

5.1 SEAs

- Records of assistance provided, information published, and non-compliance examples discovered during the course of daily services
- Records of all review efforts of concommitment State laws

5.2 LEAs

- Records of all self evaluation efforts taken related to Vocational Education
- Any records that show changes made in policy, procedures and practices in order to bring the school into compliance
- Records of evaluations conducted by anyone outside the institution
- Listing of current vocational education policies, practices and programs offered, including numbers of students (by sex) in all courses

§ 86.34 Access to course offerings.

A recipient shall not provide any course or otherwise carry out any of its education program or activity separately on the basis of sex, or require or refuse participation therein by any of its students on such basis, including health, physical education, industrial, business, vocational, technical, home economics, music, and adult education courses.

(a) With respect to classes and activities in physical education at the elementary school level, the recipient shall comply fully with this section as expeditiously as possible but in no event later than one year from the effective date of this regulation. With respect to physical education classes and activities at the secondary and post-secondary levels, the recipient shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of this regulation.

(e) Portions of classes in elementary and secondary schools which deal exclusively with human sexuality may be conducted in separate sessions for boys and girls.

(f) Recipients may make requirements based on vocal range or quality which may result in a chorus or choruses of one or predominantly one sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

VII. Course Offerings (excluding physical education). (Subpart D, Section 86.34(a)(e)(f).)

A. Basic Principles

1. Title IX prohibits on the basis of sex:

    a. exclusion from a course;

    b. separation for instruction in a course, with the exception of those portions of sex eduction instruction dealing exclusively with human sexuality. Instruction in voice or chorus may not be designated as being for one sex or the other. Instruction may be limited to certain vocal ranges or qualities, however, which may result in classes of one or predominately one sex.

    c. required enrollment in a course, including home economics, industrial arts, or military training.

2. The presence of disproportionate numbers of members of one sex or of solely members of one sex in a course, group of courses or programs is not automatically a violation of Title IX. If students of one sex have been excluded from or required to take such courses or their prerequisites in the past, if course descriptions have indicated that members of one sex have been preferred as enrollees or that the course was primarily designed for participation by members of one sex, or if students of one sex have been discouraged from enrolling by faculty, counselors, or other school officials or have only been permitted to enroll if spaces were left after members of the opposite sex enrolled, a recipient must take active steps to enroll students of the sex previously excluded or given less preference. Announcements that all courses are open to students of both sexes and revisions of course descriptions are important first steps. In addition, guidance counselors should affirmatively apprise students and parents of the availability of courses without regard to sex. On the other hand, if current and past student handbooks and course descriptions have not indicated exclusion or preference, there is no evidence of present or past discriminatory counseling, and the options of taking

home economics or shop at the elementary, middle school, or junior high school level have truly been open with no requirement that members of one sex take at least one course in home economics or shop, then disproportionate enrollment in business, trade and home economics courses at the high school level may simply reflect student interest over which the recipient has no control.

B. Information to be obtained. (Items starred should be obtained prior to any on-site review.)

*1. Name and number of all classes other than P.E. enrolling 80 percent or more students of one sex. (If the district is included in the annual enrollment survey, the number of such classes is listed on the 102.)

*2. The school district's explanation of why enrollment in such courses is predominantly of one sex.

*3. Name and number of all courses in which enrollment by members of one sex is required. (Check against item X on the 1973-74 101 and item XI on the 1974-75 which indicates if there are any graduation requirements that differ on the basis of sex.)

*4. Name and number of all courses, other than P.E., where instruction is offered separately on the basis of sex, and curriculum guides for such courses. For example, what are the objectives for boys and girls in each course?

*5. Student handbooks or other descriptive information provided students for the past three years to aid them in selecting courses and programs. (Do their parents or guardians receive the same information?)

6. For classes or courses in which there are few if any members of one sex, determine how many students of the underrepresented sex requested the class or course and why any students who requested the course and are not enrolled did not enter. What happened to members of the other sex? Did members of the underrepresented sex enroll in a course and later drop out? If so, find out why. Did members of the other sex also drop out? For the same reason?

7. Interview students who applied but did not enroll to determine their impressions of why they were not enrolled or their reasons for changing their requests. Find out if their choices were discouraged or whether they were encouraged to select alternatives.

8. Interview principals, counselors, and teachers of classes that are composed predominantly of members of one sex to obtain their views about why the enrollment is as it is and about teaching members of both sexes.

9. Interview students of the underrepresented sex enrolled in a course to determine the extent to which they were encouraged or discouraged in carrying out their choices and the extent to which they are treated equally in the classes in question. (It would be a good idea to interview students who aren't in these classes also so that these students won't be pinpointed even further than they already are.)

10. Interview administrators, older teachers, or others who might know (including where possible and when time permits, a search of school board minutes) to find out if there were ever different course requirements (probably home economics and shop) for boys and girls, whether they are still in effect or when they were dropped, and (if they were dropped) how students were notified of the change. (This information may be particularly important in determining the type of remedy or corrective action needed to prevent further discrimination.)

11. Obtain a list of student placements in work-study or cooperative education programs for the current year including:

    a) Title of course;

    b) Employer;

    c) Specific work assignment;

    d) Salary or hourly wage and number of hours per week employed;

    e) A description of the LEA's role, including counseling, in obtaining placements.

VII. COURSE OFFERINGS (EXCLUDING PHYSICAL EDUCATION)

1. Suggested Action Steps for SEAs.

- Review graduation requirements, curriculum publications, to insure they are sex affirmative.
- Review regularly the districts' compliance efforts and develop a procedure for assisting them if found to be in non-compliance.
- Write pertinent announcements to be included in existing communications (APGA journals, NEA/AFT affiliate newsletters, etc.) so all will be sensitive to the access to course requirements of Title IX.

2. Suggested Action Steps for LEAs.

- Review counseling and work-study programs to insure they are sex affirmative/sex fair.
- Review course prerequisites, course descriptions, etc. to insure they are sex affirmative.
- Develop communication - e.g. speakers - with various organizations, such as the PTA.
- Develop counseling programs in areas such as math and creative writing so as to increase the enrollment of the non-traditional student (more girls in math, more boys in advanced English, etc.).
- Be conscious of importance of role models.

3. Questions & Answers

3.1 Question:

If a discrepancy exists in the enrollment of boys and girls in certain courses (e.g. automotives, math), what are the causes and what can be done to overcome the discrepancies?

Answer:

Some of the causes may be traditional stereotyping, parental/societal influences and peer pressure.

Approaches to overcoming discrepancies can include:

- Student counseling;
- Examination of teacher attitudes and behavior with possible remedial in-service training;

- Publicizing these courses in order to emphasize their qualities and suitability for all students.

3.2 Question:
How can misconceptions about math be dispelled?

Answer:
Districts can examine math curriculum, K-12, and consider making changes in titles, descriptions, content and instructional materials. They can offer students counseling, provide information on the importance of math in college and the work world, schedule conferences related to math and point out affirmative role models.

3.3 Question:
How can sex-affirmative programs be operationalized?

Answer:
Sex-affirmative programs should include:

- Affirmative counseling;
- Positive information citing the merits of the course(s) for the non-traditional enrollee;
- Role models which reflect both sexes;
- Changes in staffing, if necessary, to establish positive role models;
- Opportunities for students to experience possible activities on a trial basis so as to have a basis for decision;
- Aggressive outreach so as to encourage the hesitant or unknowing candidate.

4. Case References

No case law at this time

5. Suggested Documentation

5.1 SEAs

- Samples of sexist and non-sexist graduation requirements
- Computer data regarding course enrollments (particularly in traditionally sexist courses)
- Records of efforts to inform the "publics."

5.2 LEAs

- Lists of all courses taught and enrollment by sex
- Records of positive counseling efforts made to reverse the typical stereotyped course enrollments
- Current graduation requirements
- Records of efforts made to inservice staff, students and parents

VIII. Physical Education. (Subpart D, Section 86.34(a)(b)(d).)

§ 86.34 Access to course offerings.

A recipient shall not provide any course or otherwise carry out any of its education program or activity separately on the basis of sex, or require or refuse participation therein by any of its students on such basis, including health, physical education, industrial, business, vocational, technical, home economics, music, and adult education courses.

(a) With respect to classes and activities in physical education at the elementary school level, the recipient shall comply fully with this section as expeditiously as possible but in no event later than one year from the effective date of this regulation. With respect to physical education classes and activities at the secondary and post-secondary levels, the recipient shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of this regulation.

(b) This section does not prohibit grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex.

(c) This section does not prohibit separation of students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact.

(d) Where use of a single standard of measuring skill or progress in a physical education class has an adverse effect on members of one sex, the recipient shall use appropriate standards which do not have such effect.

(e) Portions of classes in elementary and secondary schools which deal exclusively with human sexuality may be conducted in separate sessions for boys and girls.

A. Basic Principles

1. Physical education classes may not be conducted separately on the basis of sex, nor may participation in physical education programs be required or refused on the basis of sex.

2. Students may be grouped by ability, as assessed by objective standards, within P.E. classes or activities. Such groupings within a class may result in groups composed of one or predominantly one sex.

3. Students may be separated by sex within P.E. classes for participation in wrestling, boxing, rugby, ice hockey, football and other sports the purpose or major activity of which involves bodily contact. Baseball and softball do not fall within the above definition. for a sport not specified here, obtain as full a description as possible indicating the extent to which its purpose or major activity involves bodily contact; submit the information to headquarters and request a decision.

4. Where use of a single standard for measuring skill or progress in a physical education class has an adverse impact on members of one sex, a different standard or standards which do not have such an effect must be used. For example, if the minimum for passing a 9th grade physical fitness test is to be able to broad jump two meters and most of the boys meet or surpass this standard while most of the girls do not, either separate standards must be adopted for boys and girls or a single standard measuring individual improvement must be used instead.

5. Recipients may have an adjustment period to comply fully with the above requirements. Elementary schools may have up to one year; secondary schools may have up to three years. This is not an automatic waiting period; recipients must comply as expeditiously as possible and may only take advantage of the adjustment period if they can show real barriers to immediate compliance. Active steps toward full compliance must be taken during the adjustment period. The adjustment period may be employed for the following:

a. staff training and planning;

b. curriculum revision;

c. rescheduling;

d. renovation of facilities or construction of additional facilities.

B. Information to be obtained. (Items starred should be obtained prior to any on-site review.)

*1. Number and description, including the grade level, of all physical education classes conducted separately for males and females.

*2. Number and description, including the grade level, of all physical education classes conducted on a coeducational basis.

*3. Where physical education classes are being conducted separately for males and females:

a. a description of any barriers preventing immediate compliance with Title IX requirements;

b. a description of the steps being taken to overcome such barriers and timetable for their implementation.

4. On-site, determine whether the school or LEA is complying as expeditiously as possible. In doing this, inspect facilities, examine curriculum guides, and interview staff to determine what they are doing to convert to a coeducational program and what problems they are encountering or foresee.

VIII. PHYSICAL EDUCATION

1. Suggested Action Steps for SEAs.

- Develop recommended action steps for LEAs to use when merging departments.
- Develop guidelines for use by LEAs as they develop "new" coed P.E. programs.
- Take a status check by sending out questionnaires which gather data regarding LEA compliance.
- Provide technical assistance to districts which indicate a need for help or which are found to be in non-compliance.
- Disseminate O.C.R. findings related to physical education to school districts and to state physical education professional groups so teachers will begin to believe that O.C.R. means business.
- Determine if State or National Physical Performance Tests standards are equitable. Develop necessary changes.
- Act in a leadership role to foster continual awareness of equity.
- Provide resources such as the film "An Equal Chance Through Title IX" to LEAs who are encountering staff/student/constituent hostility.
- Inform LEAs about the newest research findings related to physical performance/coed P.E. (Source: AAPHER, 1201 16th St., N.E., Washington, D.C.)

2. Suggested Action Steps for LEAs.

- Consolidate boys' and girls' P.E. into one department.
- Eliminate sexist course titles, course content, and grading criteria.
- Disseminate O.C.R. findings to staffs so they become Title IX "believers."
- Develop guidelines and policy for compliance which specify who will do what, when.
- Establish procedure to ensure continuing compliance so staffs do not revert to sex segregated programs.

- Inservice teachers to attempt to develop positive attitudes and increase awareness.
- Use standardized physical ability tests or body type classification indexes to help ability group classes.

3. Questions & Answers

3.1 Question:

In a self-contained elementary P.E. class, is it permissible to:

- Have boys' teams play against girls' teams?
- Allow separate boys' and girls' games?

Answer:

No organization by sex for instruction is permitted. Only differences by ability are allowed. Separation for actual participation in contact sports is permitted, although not required.

3.2 Question:

May we separate P.E. classes to have boys in wrestling and girls in volleyball?

Answer:

No. There can be no sex segregating on the basis of sex. Instruction cannot be separate.

3.3 Question:

Does the P.E. department have to develop a single grading standard for both boys and girls?

Answer:

Each teacher does not have to grade the same; however, the individual teacher must use one objective standard for his/her students. If the standard has the result of discriminating against one sex in physical skills, adopt a nutral standard or, if none exists then standards can be different by sex.

3.4 Question:

Now that the adjustment period has expired, what kind of a time line does a school have to use if it is still out of compliance?

Answer:

Schools should anticipate that they are going to come into compliance very quickly. There is no longer the luxury of easing into compliance.

3.5 Question:

Can schools have separate P.E. departments for men and women teachers?

Answer:

No. Staff may not be divided on the basis of sex, and physical limitations of plant does not define the department.

3.6 Question:

Can schools request a male substitute for a male P.E. teacher due to locker room supervision?

Answer:

No.

3.7 Question:

If wrestling and volleyball are being taught in one unit, can the class be separated into boys for wrestling and girls for volleyball?

Answer:

There can be no separation by sex for instruction in wrestling techniques and strategies. However, students may be separated for the practical aspect of wrestling.

3.8 Question:

Must classes such as modern dance and football which only attract one sex be eliminated?

Answer:

No. Such classes are permitted as long as there is:

- Equal opportunity for both sexes to join;
- No adverse scheduling;
- No adverse counseling;
- An effort made to make up for past discriminations.

3.9 Question:

Do P.E. classes have to have a ratio of at least 80% of one sex - to 20% of the other to be in compliance?

Answer:

No. All classes must be open and records must show that affirmative steps have been taken to counsel and to offer classes to all students. If an investigation were to be conducted, however, classes with more than 80% enrollment of one sex would come under terse scrutiny.

3.10 Question:

In devising an elective program, what factors should be considered to ensure full compliance with Title IX?

Answer:

All course descriptions should indicate that there are no sex restrictions. The method of scheduling should avoid aversionary scheduling practices. For example, no single activities should be placed opposite each other such as wrestling and modern dance.

- Counseling practices should encourage students to enroll in any class.
- If there are grouped activities, one should not be more attractive to one sex than to the other. (Example: tennis-dance vs. wrestling-weightlifting)

The key is to eliminate the effects of past discrimination by taking positive steps. For example, offer combatives and not just wrestling so as to attract both sexes.

3.11 Question:

When scheduling students for P.E., must the class be 50% - 50% boys and girls?

Answer:

No. Scheduling cannot be on the basis of sex. If purposely sex-segregated, there is a violation. However, if the intention is to sex-integrate, there is no violation. The key is the effect of the scheduling.

Question:

Can I establish a core program that requires boys to take wrestling while permitting girls to take volleyball at the same time?

Answer:

No. Activities required of one sex must be required of the other sex.

3.13 Question:

Can a self-defense class which includes a unit on rape and sexuality be sex segregated?

Answer:

Classes dealing exclusively with sex and sexuality may be separated on the basis of sex.

A class including a unit of sex and sexuality may be separated during that part of the unit only.

3.14 Question:

Can the male teacher take the boys on one side of the gym and the female teacher teach the girls on the other side of the gym during team teaching?

Answer:

No. This is sex-segregated P.E. even though it is in the same room. Classes must have a non sex-biased criteria for ability grouping.

3.15 Question:

Can locker room supervision be considered a bona-fide condition of employment for P.E. teacher?

Answer:

No. The job is that of being a teacher. Locker room supervision is not the job. If a school is hiring a locker room attendant only, then it is a bona-fide condition for employment.

3.16 Question:

How often does an LEA have to re-evaluate the P.E. program to ascertain if there is compliance?

Answer:

Continuous on-going evaluation is required.

3.17 Question:

Can there be co-chairpersons in the P.E. department?

Answer:

Yes - as long as positions are not designated by sex. Duties should not be designated and divided on the basis of sex.

If needed, then there can be two chairpersons of either sex.

3.18 Question:

Can a school continue with an elective program that results in sex-segregated classes?

Answer:
Yes, as long as affirmative steps have been taken to overcome effects of past discrimination.

3.19 Question:
May a school permit a designated period of P.E. to be used for interscholastic athletic practice and/or competitions resulting in sex segregated classes?

Answer:
Yes, provided that even though separate,

- Both male and female athletes have use of facilities;
- After conclusion of season of sport, class is integrated again;
- A class scheduled for boys is scheduled for girls also (equal opportunity for all varsity athletes).

4. Case References

No case law at this time.

5. Suggested Documentation

5.1 SEAs

- Records of inservice attempts
- Copies of announcements regarding Title IX provisions which have been disseminated
- Lists of exemplary programs and records of where they have been shared
- Examples of sex-fair program efforts, sex-affirmative efforts
- Files on current O.C.R. findings and how instances of non-compliance were resolved

5.2 LEAs

- Copies of all course descriptions (pre and post self evaluation)
- Lists of current department chairpersons and criteria used for their selection
- Outlines of program requirements, program scheduling, program evaluation procedures
- Enrollment data for each section of physical education offered
- Records of the effect of all varsity sports classes (number of boys, number of girls...lists of teams for which service is provided, etc.)
- Records of affirmative/positive counseling efforts and the effects of those efforts
- Evidence of ongoing compliance/monitoring procedures

§ 86.31 Education programs and activities.

(a) *General.* Except as provided elsewhere in this part, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives or benefits from Federal financial assistance. This subpart does not apply to actions of a recipient in connection with admission of its students to an education program or activity of (1) a recipient to which Subpart C does not apply, or (2) an entity, not a recipient, to which Subpart C would not apply if the entity were a recipient.

(b) *Specific prohibitions.* Except as provided in this subpart, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:

(1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;

(2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;

(3) Deny any person any such aid, benefit, or service;

(4) Subject any person to separate or different rules of behavior, sanctions, or other treatment;

(5) Discriminate against any person in the application of anv rules of appearance;

(6) Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;

(7) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees;

(8) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

(c) *Assistance administered by a recipient educational institution to study at a foreign institution.* A recipient educational institution may administer or assist in the administration of scholarships, fellowships, or other awards established by foreign or domestic wills, trusts, or similar legal instruments, or by acts of foreign governments and restricted to members of one sex, which are designed to provide opportunities to study abroad, and which are awarded to students who are already matriculating at or who are graduates of the recipient institution; *Provided*, a recipient educational institution which administers or assists in the administration of such scholarships, fellowship, or other awards which are restricted to members of one sex provides, or otherwise makes available reasonable opportunities for similar studies for members of the other sex. Such opportunities may be derived from either domestic or foreign sources.

(d) *Programs not operated by recipient.* (1) This paragraph applies to any recipient which requires participation by any applicant, student, or employee in any education program or activity not operated wholly by such recipient, or which facilitates, permits, or considers such participation as part of or equivalent to an education program or activity operated by such recipient, including participation in educational consortia and cooperative employment and student-teaching assignments.

(2) Such recipient;

(i) Shall develop and implement a procedure designed to assure itself that the operator or sponsor of such other education program or activtiy takes no action affecting any applicant, student, or

IX. Single-sex Schools and Special Schools (other than vocational). (See Subpart D, Section 86.34 (b) and for Special Schools, Section 86.31.)

A. Basic Principles

1. A school district may operate single-sex, nonvocational schools if:

    a. they exist for members of both sexes;

    b. comparable programs, curricular activities, services, facilities, and equipment are equally available to members of both sexes and the same criteria or standards are applied at both for admissions, retention, promotion, program completion, and graduation.

2. In the few instances where single-sex schools constitute the only junior high or high schools in a district, certain elective courses, for example, calculus or third year German in which enrollment is low, may be offered at only one school IF:

    a. their location is not indicated until after students have selected courses and classes;

    b. provisions are made for students from both schools to enroll in the class;

    c. such classes are equally distributed among both schools so that the burden of "dislocation" falls equally on members of both sexes.

3. Single-sex, non-public, nonvocational schools which are not part of a non-public school system are eligible for Federal financial assistance for which they would otherwise qualify. Single-sex, non-public, nonvocational schools which are part of a non-public school system are eligible for Federal assistance if they meet the conditions described in this section under A. 1. and 2.

employee of such recipient which this part would prohibit such recipient from taking; and

(ii) Shall not facilitate, require, permit, or consider such participation if such action occurs.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

4. Special schools that are not single-sex, and are either vocational or nonvocational, for example, an alternative school or a school for the arts, may not differentiate on the basis of sex in criteria or standards for admission, retention, promotion, program completion or graduation.

B. Information to be obtained. (Items starred should be obtained in advance.) Note that on the 1974-75 101's respondents are asked to list any single-sex schools. If you do not have 1974-75 data ask *if the district operates any single-sex schools.

1. For each single-sex or special school:

    *a. admissions criteria;

    *b. course descriptions provided students to aid them in selection;

    *c. requirements for graduation;

    *d. copy of student handbook or other data provided students to familiarize them with course offerings, facilities, extracurricular activities, services, and rules and regulations.

2. For each single-sex school:

    *a. a list of all courses currently offered and number of sections of the course;

    *b. a list of extracurricular activities offered, including intramural and interscholastic athletics;

    *c. rules and regulations governing students;

    *d. description of all student services offered;

    e. on-site, inspect and describe the facilities, equipment and general condition of the school plant, including gyms, playing fields, locker rooms, showers, toilets, laboratory facilities and equipment, and libraries. (Copies of accreditation reports for junior high and high schools will provide you with data on classroom sizes, number of library volumes, laboratories, etc.);

f. examine library selections in both schools. Do they differ in any way? Examine particularly carefully the periodical selection;

g. review yearbooks and other publications to verify and obtain further information about the program in each school.

IX. SINGLE SEX SCHOOLS (OTHER THAN VOCATIONAL)

1. Suggested Action Steps for SEAs.

(In the case of Single Sex Schools)

- Provide technical support and observation services.
- Establish a self-initiated review process and disseminate.
- Coordinate self-review processes among LEAs.
- Review admission irregularities for provision of equal or comparable services.

(In the case of Special Schools)

- Recommend criteria to LEAs that reflects non-discrimination in admissions, retention, promotion, program completion and graduation.
- Encourage and remind SEAs that even though the school they operate is special in nature, they still must comply with the requirements of Title IX.
- Assure that SEAs do not discriminate in the operation of their own schools.

2. Suggested Action Steps for LEAs.

(In the case of Single Sex Schools)

- Compare class offerings and examine procedures for cross registration.
- Establish, with help of SEA, means of self-review -- perhaps sharing staffing resources with the state, etc. and sharing between two separate districts.

(In the case of Special Schools)

- Establish non-discriminatory criteria for admission, retention, promotion, program completion, and graduation.

3. Questions & Answers

(In the case of single-sex schools)

3.1 Question:
What, precisely, is a single-sex school?

Answer:
A LEA single unit whose enrolled student population is exclusively of one sex.
NOTE: Although single-sex schools are becoming increasingly rare, many State facilities, particularly correctional institutions, maintain single-sex programs.

3.2 Question:
What agency(s) are responsible for compliance under Title IX?

Answer:
Title IX grivance procedures specify that OCR, the LEA, and the SEA have responsibilities for insuring compliance; OCR is particurly charged with review and enforcement. However, primary responsibility lies with the SEA and LEA to insure, through self-evaluation and self-review, that the conditions of compliance have been met.

3.3 Question:
What administrative procedures might the SEA, and the LEA, employ to promote compliance?

Answer:
An on-going self-evaluation process and implementation procedure with thorough documentation are most important. Because the concept of "comparable" programs is vague, a LEA & SEA should maintain evidence of its procedures, including

- course descriptions
- curriculm guides
- enrollment statistics
- state and local policy documents
- extra-carricular activities materials

SEAs and LEAs should retain all documents pertaining to self-review, such as:

- evaluation documents, procedures, data, and analysis
- all pertinent correspondence and policy statements

- all memos, letters, etc., relating to attempts to bring programs into compliance

3.4 Question:
Who should bear the burden of determing what is "separate but equal." What criteria are to be employed?

Answer:
Ultimately this will probably require court and HEW clarification. LEAs & SEAs are responsible to do their "best" to insure compliance.

(In the case of special schools)

3.5 Question:
Can a School for the Arts require students to pass an examination for admission to the school?

Answer:
Yes, as long as the examination is related appropriately to the mission of the school and does not adversely affect the admission of one sex. Concern has been expressed over overemphasizing previous experience as a qualifying factor for admission.

3.6 Question:
If a special school maintains single-sex dormitories on campus, can separate activities be sponsored by each dorm restricted to participation by dorm residents?

Answer:
Yes, as long as activities are social in nature. Educational activities must be open to participation by all students. Care should be taken to ensure equal/comparable activities in other dorms, particurlarly if school funds are used to support the events.

4. Case References

Brown vs. Board of Education

United States vs. Hinds County School Board

Berkelman vs. San Francisco Unified School District

Vorchheimen vs. School District of Philadelphia

5. Suggested Documentation

5.1 SEAs

- Materials pertinent to self-evaluation process
- Overall figures for single sex schools
- Records of all announcements sent to all single sex and/or special school regarding Title IX
- Copies of all data required of LEAs as related to State operated schools (see page 20 of this document)
- Samples of exemplary practices

5.2 LEAs

- See page 20 of this document

X. Treatment of Pregnant Students. (Subpart D, Section 86.40(b).)

A. Basic Principles

1. A pregnant student may not be discriminated against in any aspect of the educational program, including compulsory participation in or exclusion from any classes or extracurricular activities.

2. School systems may operate special programs, schools, and classes for pregnant girls. However, attendance in any of the above must be truly optional, i.e., at the request of the girl or upon the certification of her doctor. Attendance is not considered optional if the only options are leaving school or enrolling in a special program.

3. A pregnant girl who for medical reasons finds it necessary to be homebound must be provided with the same services provided to other students who are homebound for medical reasons. In other words, if an LEA provides homebound instruction to medically disabled students, it must provide homebound instruction to similarly disabled pregnant girls.

4. If a school system requires courses or activities that a pregnant girl may not engage in for medical reasons, she should be considered exempt from the requirement if other students are granted exemptions for medical reasons. The pregnant girl should be required to furnish the same information or medical certification as other students requesting medical exemptions and no more.

5. If a school system has no services or other provisions for temporarily disabled students, it must treat pregnancy as a justification for a leave of absence for a reasonable period of time, after which the student must be reinstated to the status she held when the leave began.

6. Any separate instructional program offered pregnant students must be comparable to the regular instructional program.

B. Information to be obtained. (Items starred should be obtained prior to any on-site review.)

§ 86.40 Marital or parental status.

(a) *Status generally.* A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status which treats students differently on the basis of sex.

(b) *Pregnancy and related conditions.* (1) A recipent shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.

(2) A recipient may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation in the normal education program or activity so long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician.

(3) A recipient which operates a portion of its education program or activity separately for pregnant students, admittance to which is completely voluntary on the part of the student as provided in paragraph (b)(1) of this section shall ensure that the instructional program in the separate program is comparable to that offered to non-pregnant students.

(4) A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan or policy which such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity.

(5) In the case of a recipient which does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status which she held when the leave began.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

*1. Copies of any policies, regulations, or directives regarding treatment of pregnant students.

*2. Descriptions of any special courses, programs, schools, or other services provided by the LEA to pregnant students.

*3. Descriptions of any services provided by the LEA to students with temporary disabilities and the number of students, by sex, who have received such services since July 1, 1972.

*4. Number of girls who have dropped out of school because of pregnancy or related conditions during the present and each of the past three school years.

*5. Number of girls who left school due to pregnancy or childbirth who have reentered the regular program during the present and each of the past three school years.

*6. Number of pregnant girls who have remained in the regular school program during the present and each of the past three school years.

7. If the district has a special school annex or other special program for pregnant girls, interview the enrollees to determine the extent to which their enrollment was optional. (Why did you choose to enroll in this program? If you had not been able to enroll in this school, what would you have done? Would you have remained in the regular program? Were you advised by anyone to enter this school? etc.)

8. If a substantial number of girls left school because of pregnancy, secure their names and addresses and interview as many as possible to determine the extent to which their withdrawal was voluntary and their reasons for not returning.

9. Interview students who left because of pregnancy and have since returned to determine:

    a) the extent to which their withdrawal was voluntary;

   - b) if they encountered any particular problems in being reinstated.

10. Interview the director of any program or school for pregnant girls to determine her or his:

    - a) description of the goals of the program;
    - b) assessment of the extent to which enrollment has been voluntary;
    - c) assessment of the extent to which the students enrolled will return to and remain in the regular program.

X. TREATMENT OF PREGNANT STUDENTS

1. Suggested Action Steps for SEAs.

- Examine the need to develop state wide legal or procedural guidelines regarding the treatment of married or pregnant students in school districts.
- Serve as a resource to LEAs for technical assistance and for referral to programs which demonstrate compliance.
- Assist LEAs to develop programs and facilities for pregnant students.

2. Suggested Action Steps for LEAs.

- Evaluate present treatment of and practices relating to married or pregnant students to determine compliance with Title IX regulations.
- Adopt a policy regarding treatment of married or pregnant students.
- Develop a procedure for monitoring compliance in this area.

3. Questions & Answers

3.1 Question:

May a district have a special program or courses for pregnant students?

Answer:

Yes. Separate instructional programs, schools or classes for pregnant students are permissible as long as participation in such programs is optional.

3.2 Question:

If a student elects to participate in a special program for pregnant students, must she also have access to other courses, programs or activities available to students in a regular program?

Answer:
Yes. A pregnant student in a separate program must be offered a comparable instructional program. In addition, she may not be denied access to other educational or extra-curricular activities on the basis of her pregnancy.

3.3 Question:
May a school district require certification of ability of a pregnant student to participate fully in the regular educational program?

Answer:
Such certification may not be required unless such certification is required of all students with conditions requiring the attention of a physician.

3.4 Question:
May a pregnant student request exemption from physical education or any other required course on the basis of her pregnancy?

Answer:
Such an exemption should be granted if other students are granted exemptions for medical reasons. Requirements as to the type of certification required for the granting of exemptions for pregnancy or other medical reasons shall be the same.

4. Case References

Perry v. Granada Municipal Separate School District, 300 F. Supp. 748 (N.D. Miss. 1969)

Shull v. Columbus Municipal Separate School, 338 F. Supp. 1376 (N.D. Miss. 1972)

Ordway v. Hargraves, 323 F. Supp. 1155 (D. Mass. 1971)

Davis v. Meek, 344 F. Supp. 298 (N.D. Ohio 1972)

Romans v. Crenshaw, 354 F. Supp. 868 (S.D. Texas 1972)

Hollon v. Mathis Independent School District, 358 F. Supp. 1269 (S.D. Texas 1973)

Houston v. Prosser, 361 F. Supp. 295 (N.D. Ga. 1973)

(Also employment cases relating to pregnancy.)

5. Suggested Documentation

5.1 SEAs

- Copies of all laws and regulations pertaining to treatment of pregnant students
- Outcomes of all applicable court cases
- Examples of local district policies, procedures and programs
- Records of SEA policies, practices, procedures, and programs as applied to State operated schools

5.2 LEAs

- Copies of local policy
- Description of program options available
- Administrative/counseling procedures relating to treatment of pregnant students
- Data as needed to assist in monitoring compliance
- Records as noted on page 23 of this document

XI. Student Services. (Subpart D, Section 86.31 (b) (3) (7) and (d); Sections 86.36 - 86.39.)

A. Basic Principles

1. Counseling services may not differentiate on the basis of sex in terms of:

    a. career or course guidance offered;

    b. tests or other materials used for appraising or evaluating students, including the use of tests which permit or require different treatment of the results on the basis of sex, unless such different materials cover the same occupations and interest areas and the use of such different materials is shown to be essential to eliminate sex bias.

    The following are descriptions of vocational interest instruments commonly in use:

    -- Strong Vocational Interest Blank: has two separate test booklets, one for each sex; contains explicitly sexist items (e.g. "Do you like stag parties?") and genderloaded occupational titles (policeman, salesman); includes an antiquated Masculinity-Femininity scale; limits options solely on the basis of sex.

    -- Strong-Campbell Interest Inventory: a 1974 revision of the SVIB described above. Eliminates most, but not all of the sex bias problems of the SVIB. Recommended for use with students who are professionally oriented.

    -- Holland's Self-Directed Search: has been cited in studies for its sex bias; activities are categorized as "realistic" and "conventional" on the basis of sex; uses gender-specific occupational titles;

§ 86.31 Education programs and activities.

(b) *Specific prohibitions.* Except as provided in this subpart, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:

(1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;

(2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;

(3) Deny any person any such aid, benefit, or service;

(4) Subject any person to separate or different rules of behavior, sanctions, or other treatment;

(5) Discriminate against any person in the application of anv rules of appearance;

(6) Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;

(7) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees;

(8) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

(d) *Programs not operated by recipient.* (1) This paragraph applies to any recipient which requires participation by any applicant, student, or employee in any education program or activity not operated wholly by such recipient, or which facilitates, permits, or considers such participation as part of or equivalent to an education program or activity operated by such recipient, including participation in educational consortia and cooperative employment and student-teaching assignments.

(2) Such recipient;

(i) Shall develop and implement a procedure designed to assure itself that the operator or sponsor of such other education program or activtiy takes no action affecting any applicant, student, or employee of such recipient which this part would prohibit such recipient from taking; and

(ii) Shall not facilitate, require, permit, or consider such participation if such action occurs.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.36 Counseling and use of appraisal and counseling materials.

(a) *Counseling.* A recipient shall not discriminate against any person on the basis of sex in the counseling or guidance of students or applicants for admission.

(b) *Use of appraisal and counseling materials.* A recipient which uses testing or other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials which permit or require different treatment of students on such basis unless such different materials cover the same occupations and interest areas and the use of such different materials is shown to be essential to eliminate sex bias. Recipients shall develop and use internal procedures for ensuring that such materials do not discriminate on the basis of sex. Where the use of a counseling test or other instrument results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination in the instrument or its application.

(c) *Disproportion in classes.* Where a recipient finds that a particular class contains a substantially disproportionate number of individuals of one sex, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination on the basis of sex in counseling or appraisal materials or by counselors.

a person must limit respons to what he or she has done rather than to what he or she might like to do, thus further limiting choices on the basis of experiences which may not have been available to members of both sexes.

-- Kuder Occupational Interest Survey, Form DD: revisions were made in 1974 in the reporting system and in the interpretative leaflet with the intent of removing sex bias; previously females' interests were compared only on female-normed occupational scales; now both males and females receive scores on both male-normed and female-normed occupational scales; all but a few of the occupational titles are not gender-linked; intended for college students, students in grades 11-12, and adults.

-- Kuder General Interest Survey, Form E (new version of Form C): Interpretative materials have been revised to explain why there are separate norms for males and females. Both male and female profiles are reported for any given person if the sex grid is left blank on the machine scorable answer sheet; on the hand-scored version, a student can develop both male and female profiles. Two levels of profile leaflets one for grades 6-8 and one for grades 9-12, are available It would seem that there are still problems with this one, much being dependent on instru tions given by the test admini trator.

-- The Non-Sexist Vocational Card Sort: designed with th express purpose of providing an unbiased means of assessing vocational interest; uses

§ 86.37 Financial assistance.

(a) *General*. Except as provided in paragraphs (b) and (c) of this section, in providing financial assistance to any of its students, a recipient shall not: (1) On the basis of sex, provide different amount or types of such assistance, limit eligibility for such assistance which is of any particular type or source, apply different criteria, or otherwise discriminate; (2) through solicitation, listing, approval, provision of facilities or other services, assist any foundation, trust, agency, organization, or person which provides assistance to any of such recipient's students in a manner which discriminates on the basis of sex; or (3) apply any rule or assist in application of any rule concerning eligibility for such assistance which treats persons of one sex differently from persons of the other sex with regard to marital or parental status.

(b) *Financial aid established by certain legal instruments*. (1) a recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established pursuant to domestic or foreign wills, trusts, bequests, or similar legal instruments or by acts of a foreign government which requires that awards be made to members of a particular sex specified therein; *Provided*, that the overall effect of the award of such sex-restricted scholarships, fellowships, and other forms of financial assistance does not discriminate on the basis of sex.

(2) To ensure nondiscriminatory awards of assistance as required in subparagraph (b)(1) of this paragraph, recipients shall develop and use procedures under which:

(i) Students are selected for award of financial assistance on the basis of nondiscriminatory criteria and not on the basis of availability of funds restricted to members of a particular sex;

(ii) An appropriate sex-restricted scholarship, fellowship, or other form of financial assistance is allocated to each student selected under subparagraph (b)(2)(i) of this paragraph; and

(iii) No student is denied the award for which he or she was selected under subparagraph (b)(2)(i) of this paragraph because of the absence of a scholarship, fellowship, or other form of financial assistance designated for a member of that student's sex.

(c) *Athletic scholarships*. (1) To the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics.

(2) Separate athletic scholarships or grants-in-aid for members of each sex may be provided as part of separate athletic teams for members of each sex to the extent consistent with this paragraph and § 86.41 of this part.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; and Sec. 844, Education Amendments of 1974, Pub. L. 93-380, 88 Stat. 484)

gender-neutral occupational titles. Available from the University Counseling Center, University of Florida.[1]

2. Recipients must develop and use internal procedures to ensure that appraisal and counseling materials do not discriminate on the basis of sex.

3. Where the use of a counseling or other instrument results in a substantially disproportionate number of individuals of one sex in any particular course of study or classification, the recipient must take whatever action is necessary to assure itself that such disproportion is not the result of discrimination in the instrument or its application.

4. Where a particular class contains a substantially disproportionate number of individuals of one sex, the recipient shall take whatever action is necessary to ensure that such disproportion is not the result of sex discrimination in counseling or appraisal materials or by counselors.

5. Health services and insurance provided to students may not discriminate on the basis of sex. (See the prohibitions under Subpart E, Section 86.56 for further discussion of fringe benefits as well as the discussion in Section 89, p. 24136 of the preamble.)

6. Employment or job placement services may not discriminate on the basis of sex. Specifically, a placement service or employment office operated by the recipient:

    a. must obtain assurances of nondiscrimination from potential employers;

    b. may not accept employment requests from or refer any student to employers who:

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[1] The above information for the most part was taken from Eliminating Sex Discrimination in Schools: A Source Book, North Carolina State Department of Public Instruction, Raleigh, N.C.: May, 1975.

§ 86.38 Employment assistance to students.

(a) *Assistance by recipient in making available outside employment.* A recipient which assists any agency, organization or person in making employment available to any of its students:

(1) Shall assure itself that such employment is made available without discrimination on the basis of sex; and

(2) Shall not render such services to any agency, organization, or person which discriminates on the basis of sex in its employment practices.

(b) *Employment of students by recipients.* A recipient which employs any of its students shall not do so in a manner which violates Subpart E.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.39 Health and insurance benefits and services.

In providing a medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students, a recipient shall not discriminate on the basis of sex, or provide such benefit, service, policy, or plan in a manner which would violate Subpart E if it were provided to employees of the recipient. This section shall not prohibit a recipient from providing any benefit or service which may be used by a different proportion of students of one sex than of the other, including family planning services. However, any recipient which provides full coverage health service shall provide gynecological care.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

1) specify that only members of one sex will be considered for positions or that preferential consideration will be given to members of one sex;

2) have not furnished assurances of nondiscriminatio

c. may not differentiate on the basis of sex in jobs posted or referrals made;

d. should keep records by sex of referrals made and the outcome, including whether students were employed, the positions in which they were employed, and the salaries given. The recipient should periodically analyze such records to assure nondiscrimination and where patterns of differential job assignments, salaries, acceptance or rejections appear, ask the employer to demonstrate that such patterns are not the result of discriminatory practices. If the employer fails to make such demonstration of if such demonstration does not provide sufficient assurance that employment is made available without discrimination, the recipient is required to terminate its relationship with the employer. Keep in mind that in executing the above process, the recipient is not required to conduct on-site reviews.

7. In instances where an LEA provides tuition grants to students for obtaining services at other facilities, as may be the case with institutional care for the severely mentally retarded, such aid may not be differentiated on the basis of sex.

B. Information to be obtained. (Items starred should be obtained prior to any on-site review.)

*1. Descriptions of all student services, including but not limited to counseling, health employment and services for special needs;

*2. copies of any insurance policies which the recipient makes available to students;

*3. the names, including form and date of publication, of any appraisal instruments used in counseling students or assigning them to programs;

*4. a description of the internal procedures being used to ensure that appraisal and counseling materials do not discriminate on the basis of sex;

*5. for each elementary, junior high, high, and vocational school, as appropriate, the number of students enrolled in the following categories of courses or programs:

  a. business and office occupations

  b. industrial and trade

  c. home economics

  d. health occupations

  e. special education

*6. If the number of individuals of one sex enrolled in any of the above categories of courses or programs is substantially disproportionate, what action has been taken by the recipient to assure that such disproportion is not the result of sex discrimination in a counseling or other instrument or its application?

*7. For each elementary, junior high, high and vocational school, where a particular class contains a substantially disproportionate number of individuals of one sex, what action has been taken to ensure that such disproportion is not the result of sex discrimination in counseling or appraisal materials or by counselors?

8. Interview those involved with any job placement services to determine what records are kept. Look through any openings posted there or in the classified section of the school newspaper to see if members of one sex are given preferential consideration or excluded from applying.

9. If records are kept of referrals and their outcome, determine the extent to which discriminatory patterns appear. If only girls are referred to babysitting jobs and boys to gardening jobs, find out why.

10. Ask counselors what appraisal instruments they use and if different forms are used or if the results are treated differently for boys and girls.

11. Ask counselors to what extent they provide career guidance and course information in traditionally female fields to boys and vice versa. Ask them if they know of any girls interested in entering traditionally male fields and vice versa.

12. Determine whether the district provides tuition aid for special services and obtain a list of students, by name and sex, receiving such aid and the service received. If there is a preponderance of members of one sex receiving aid for certian services, find out why.

XI. STUDENT SERVICES

1. Suggested Action Steps for SEAs.

- Develop state guidelines for student services including assessment tools.
- Encourage LEAs which are in compliance.
- Provide staff level activities (in-service) for individuals involved in counseling, etc.
- Provide examples of students rights handbooks.
- Monitor CETA activities as they involve student employment.
- Promote networks and contacts for solving problems, disseminating latest changes.
- Promote needed State legislation and/or disseminate insights to existing parallel State legislation.
- Provide compliance reviews as requested.
- Provide resources related to non-sexist counseling materials/methods/techniques.

2. Suggested Action Steps for LEAs.

- Review all policy and administration regulations and protocol related to student services for compliance.
- Provide staff development (in-service).
- Keep statistics on class enrollments.
- Keep statistics on suspensions, etc.
- Provide handbooks of student rights.
- Monitor procedures and activities for compliance.
- Review Regional Opportunity Programs (ROP) as they apply to student employment, work/study.
- Review all counseling materials used and eliminate those which are sexist.
- Discover which areas of the programs offered appear to be sexist, investigate the cause(s), and implement sex fair and/or sex affirmative measures as necessary.

3. Questions & Answers

3.1 Question:

What are the Title IX requirements for counseling in schools and colleges?

Answer:

An institution using testing or other materials for counseling may not use different materials for males and females, nor may it use materials which lead to different treatment of students on the basis of sex.

If there is a class or course of study which has a disproportionate number of members of one sex, the school is required to assure that the disproportion does not stem from discrimination by counselors or materials.

3.2 Question:

May a counselor ever use tests or materials for appraising or evaluating students that permit or require different treatment of the results on the basis of sex?

Answer:

Yes, if such instruments can be shown to be essential to the elimination of sex bias and no non-sex-biased instrument is available.

3.3 Question:

May a course catalog indicate that certain classes are more appropriate for either males or females?

Answer:

No. Furthermore, the course titles and descriptions should be reviewed to insure that the descriptions will not contribute in any way to a substantial disproportionate number of one sex in a particular course.

3.4 Question:

What obligations do counselors have to examine and influence the balance of males to females in classes/programs?

Answer:

The counselor must examine the balance to determine whether it is substantially disproportionate, and if it is disproportionate, the counselor must determine the cause and take steps to correct it. Counseling practices, instrument results, scheduling, appraisal materials, and the counselor's personal viewpoint should all be examined.

3.5 Question:

What must counselors do to ensure that career information and options are open to males and females on an equal basis?

Answer:

A counselor must provide career and/or course guidance that is free of sex bias. Tests and other materials used for appraising or evaluating students must treat the sexes equally (unless such instruments can be shown to be essential to eliminating sex bias and no other non sex-biased instrument is available).

3.6 Question:

Are locally developed assessment instruments subject to Title IX?

Answer:

Yes, the criteria are the same as for standardized, commonly used instruments.

3.7 Question:

What records and analyses should a placement office use?

Answer:

A placement office should keep records by sex of referrals made and the outcome. These records should be analyzed periodically; and if discriminatory patterns appear, employers should be asked to explain. On-site reviews of employers are not required.

3.8 Question:

May a school job placement service advertise positions with businesses or companies that discriminate on the basis of sex?

Answer:

No, a placement service or employment office must obtain assurances of non-discrimination from potential employers and may not accept employment requests from or refer any student to employers who specify that only members of one sex will be considered or that preferential consideration will be given to members of one sex.

3.9 Question:

May students be assigned to a counselor on the basis of sex? (I.e., Girls' Dean, Boys' Counselor)

Answer:

No.

3.10 Question:

May a full coverage student health service provide gynecological care?

Answer:

Yes, it should include it. Also a benefit or service (such as family planning) which may be used by a different proportion of students of one sex is not prohibited.

4. Case References

Gardner v. State of Alabama, Department of Pensions and Security, 385 F 2d 804 (5th Cir. 1967)

Krplourtz vs University of Chicago

Bond vs. Virginia Polytechnic Insititute and State University

5. Suggested Documentation

5.1 SEAs

- Prototypes and models
- State laws - principles and interpretations
- Document needs for legislation
- Activities of CETA programs
- Lists of non-sexist counseling materials
- Samples of sexist and non-sexist course descriptions, counseling techniques, etc.
- Examples of LEAs which have made the necessary changes

5.2 LEAs

- See starred items on pages 28 and 29 of this document
- Policy statements

XII. Extracurricular Activities (excluding athletics). (Subpart D, Section 86.31(a)(b)(d))

§ 86.31 Education programs and activities.

(a) *General.* Except as provided elsewhere in this part, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives or benefits from Federal financial assistance. This subpart does not apply to actions of a recipient in connection with admission of its students to an education program or activity of (1) a recipient to which Subpart C does not apply, or (2) an entity, not a recipient, to which Subpart C would not apply if the entity were a recipient.

(b) *Specific prohibitions.* Except as provided in this subpart, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:

(1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;

(2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;

(3) Deny any person any such aid, benefit, or service;

(4) Subject any person to separate or different rules of behavior, sanctions, or other treatment;

(5) Discriminate against any person in the application of any rules of appearance;

(6) Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;

(7) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees;

(8) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

(d) *Programs not operated by recipient.* (1) This paragraph applies to any recipient which requires participation by any applicant, student, or employee in any education program or activity not operated wholly by such recipient, or which facilitates, permits, or considers such participation as part of or equivalent to an education program or activity operated by such recipient, including participation in educational consortia and cooperative employment and student-teaching assignments.

(2) Such recipient;

(i) Shall develop and implement a procedure designed to assure itself that the operator or sponsor of such other education program or activity takes no action affecting any applicant, student, or employee of such recipient which this part would prohibit such recipient from taking; and

(ii) Shall not facilitate, require, permit, or consider such participation if such action occurs.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

A. Basic Principles - An LEA may not conduct, operate, sponsor or support any extracurricular activity which on the basis of sex:

1. excluded students from participation;
2. limits students participation;
3. differentiates in treatment of students.

B. Data to be obtained. (Items starred should be obtained prior to any on-site review.)

*1. List of all extracurricular activities including:

   a. Name

   b. Number of members by sex

   c. Name and sex of faculty advisor

   d. Meeting times (day(s), hours)

*2. Copies of any policies or regulations concerning student membership in extracurricular activities.

*3. Copies of student handbooks or other information describing the extracurricular activities in which they may participate.

4. On-site, check the above information against the activities shown in yearbooks or otherwise described in school publications.

5. Certain clubs or organizations merit particular scrutiny, including:

   a. Future Farmers of America

   b. Future Homemakers of America

   c. Cheerleaders

   d. Glee Clubs and Choruses (They should not have boys' and girls' sections but rather sections composed of certain voice ranges, which may result in choruses of one or predominately one sex.)

   e. Pep Club

   f. State Crew

   g. Audio-visual aides

   h. Crossing guards

   i. Hall monitors

6. Ask principals, counselors, and faculty advisors for their opinions about the causes of membership in particular extracurricular activities being primarily or exclusively one-sex. Also ask students within those organizations when possible.

XII. EXTRACURRICULAR ACTIVITIES (EXCLUDING ATHLETICS)

1. Suggested Action Steps for SEAs.

- Review policies of major state-wide, traditionally single sex extracurricular organizations.
- Disseminate findings to LEAs.
- Recommend compliance procedures and assist as requested.
- Provide inservice to student body leaders and/or student activity directors.

2. Suggested Action Steps for LEAs.

- Review existing extracurricular organizations to determine Title IX compliance.
- Develop and implement compliance plan as needed.
- Offer training regarding Title IX requirements/ramifications to students and student activity directors.

3. Questions & Answers

3.1 Question:
Can schools have Homecoming Queens and Courts?

Answer:
Although this kind of activity is allowed as long as comparable honors are available for boys and girls, it is not within the spirit of Title IX (see page 41 of this document). Alternative approaches are encouraged.

3.2 Question:
What actions can be taken with respect to sex-segregated songleaders, drill teams, etc.?

Answer:
The following actions should be considered:

- Dissolve the groups and establish mixed groups;
- Examine routines and movement and make changes to ensure they are consistent with the traditional values of both sexes;
- Don't have any such organized groups; have informal groups;

- Encourage members of both sexes to participate in all groups through publicity, counseling, etc.

3.3 Question:

Does student coverage in school publications such as yearbooks and student newspapers need to be equal for both sexes?

Answer:

As much as the school district has control over the publication, coverage should be proportionate. Students and advisors involved should be in-serviced regarding Title IX and sex equity.

3.4 Question:

Must handbooks, Constitutions and other communications be restructured regarding gender references?

Answer:

Yes, all publications should be reviewed for gender-related pronouns and sex references. This includes Board policies and regulations related to students.

3.5 Question:

What about Mother-Daughter/Father-Son activities?

Answer:

These have been declared exempt. However, there is some question about possible discrimination due to the high percentage of students who come from homes with one parent. It is suggested that these Mother-Daughter/Father-Son activities be called something else so that students are free to choose a relative or a substitute parent.

3.6 Question:

Can pep groups be required to support girls' and boys' teams on an equal basis?

Answer:

It would depend on whether or not the lack of support of the pep groups resulted in adverse effect on the girls' sport program.

3.7 Question:

Are Girls' State/Boys' State exempt?

Answer:

Yes, HEW has ruled Girls' State/Boys' State exempt from the regulation.

3.8 Question:
Can musical groups be limited to one sex?

Answer:
No. However, one sex musical groups might exist due to vocal range; i.e., tenor group. But schools may not have groups that are all boys or all girls unless the opportunity to participate is open to both.

4. Case References

The following related precedent(s) should be noted:

- Scottsdale Public Schools challenge re: Father-Son/Mother-Daughter Banquets. (Ruling by H. Walsh, OCR, overturned by President Ford.)
- Exemptions of Service Organizations (Federal Register, 1976)

5. Suggested Documentation

5.1 SEAs

- Copies of all policies and recruitment efforts related to groups sponsored by the State Departments (HEROS, 4-H, High School Athletic Association, etc.)
- Records of all services provided to LEAs, student body groups, related professional groups
- Copies of publications and records of dates on which they were disseminated

5.2 LEAs

- Items starred on page 31 of this document
- Copies of policies, publication efforts, and the results of their application to students
- Copies of all announcements made regarding student activities

§ 86.41 Athletics.

(a) *General.* No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.

(b) *Separate teams.* Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try-out for the team offered unless the sport involved is a contact sport. For the purposes of this part, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball and other sports the purpose of major activity of which involves bodily contact.

(c) *Equal opportunity.* A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available the Director will consider, among other factors:

(i) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;

(ii) The provision of equipment and supplies;

(iii) Scheduling of games and practice time;

(iv) Travel and per diem allowance;

(v) Opportunity to receive coaching and academic tutoring;

(vi) Assignment and compensation of coaches and tutors;

(vii) Provision of locker rooms, practice and competitive facilities;

(viii) Provision of medical and training facilities and services;

(ix) Provision of housing and dining facilities and services;

(x) Publicity.

Unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the Director may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.

(d) *Adjustment period.* A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the elementary school level shall comply fully with this section as expeditiously as possible but in no event later than one year from the effective date of this regulation. A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the secondary or post-secondary school level shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of this regulation.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; and Sec. 844, Education Amendments of 1974, Pub. L. 93-380, 88 Stat. 484)

XIII. Intramural, Club and Interscholastic Athletics (Subpart D, Section 86.41)

A. Basic Principles

1. With two exceptions, athletic programs may not be conducted separately on the basis of sex. These exceptions are:

   a. teams in contact sports: football, basketball, wrestling, boxing, ice hockey, rugby or other sports whose purpose of major activity involves bodily contact. Note that this definition does not apply to baseball and softball. For other sports, a determination must be made as to whether their purpose or major activity involves bodily contact. Obtain as full a description as possible indicating the extent to which its purpose or major activity involves bodily contact; submit the information to headquarters and request a decision.

   b. teams in sports where selection is based upon competitive skill

2. A recipient is permitted but not required to conduct teams in which the above two exceptions apply separately unless operation of separate teams is necessary for effective accommodation of the interests and abilities of members of both sexes.

3. Where a recipient operates or sponsors a team in a non-contact sport for members of one sex and operates or sponsors no team in that sport for members of the other sex, members of the excluded sex must be allowed to try out for that team if overall athletic opportunities for members of the excluded sex have previously been limited. The fact that there has been no tennis team for female students does not automatically mean that they must be allowed to try out for the "male" tennis team. They must be permitted to try out for it, however, if opportunities to participate in competitive athletics generally (not just tennis) have previously been more limited for females than for males.

4. Persons may not be excluded on the basis of sex from participation in a sport offered a the intramural, club, or interscholastic team level, even though it may be a contact sport or the basis for team selection is competitive skill, if sufficient interest exists among members of the sex that would otherwise be excluded to form a separate team and if there are fewer opportunnities for members of that sex to participate in athletics at the level of competition in question.

5. A recipient may operate unitary teams (i.e. teams composed of members of both sexes) for which selection is based upon competitive skill only if, in doing so, the interests and abilities of members of both sexes are effectively accommodated. In other words, where a school decides that anyone, regardless of sex, may try out for a team, and there is substantial interest on the part of females in that sport, but very few members of that sex have skill sufficient to be selected, the sponsorship of the unitary team would not be sufficient to meet the interests and abilities of both sexes.

6. Teams (usually intramural) in noncontact sports, for which selection is based on interest rather than skill, may not limit membership to students of one sex.

7. Equal opportunity to participate in athletics must be provided to members of both sexes. Factors to be considered in assessing equality of opportunity include, but are not limited to:

    a. effective accommodation of the interests and abilities of members of both sexes in sports and levels of competition offered;

    b. equipment and supplies provided;

    c. travel and per diem allowance provisions;

    d. opportunities to receive coaching and academic tutoring;

    e. access to locker rooms, practice and competitive facilities;

f. access to medical and training facilities and services;

g. access to housing and dining facilities and services;

h. efforts to provide publicity.

8. Neither equal aggregate nor equal per capita expenditures for male and female teams are required. However, whether necessary funds are provided may be considered in assessing equality of opportunity for members of one sex. Weighing the items listed under XIII. A. 7 are more important in determining equality of opportunity than a detailed analysis of the athletic budget, which OCR should seek to avoid.

9. Teams composed primarily or exclusively of members of one sex may not be subject to limitations or regulations (not game rules), particularly with respect to scheduling and supervision, that are different from those to which teams composed exclusively or primarily of members of the other sex are subject. Thus, for example, the criteria for eligibility, including medical examination and scholastic average, may not differ on the basis of sex.

10. Students may not be denied coaching, instruction, training or other supervision (except in locker rooms) by a person of the opposite sex nor, conversely, under the regulations relating to employment, may a person be prevented from coaching, instructing, training or otherwise supervising students of the opposite sex.

11. While the length of a season, including the number of opportunities to compete, may not differ on the basis of sex, a school may schedule competitive events in the same sport at different times for girls' and boys' teams. For example, the girls' golf team may compete in the fall while the boys' golf team competes in the spring, or girls' basketball may be scheduled on Friday night and boys' on Saturday morning. Opportunities to compete before an audience, however, should be comparable.

12. A recipient is required to provide equal opportunities to members of both sexes in athletics as expeditiously as possible but may have up to than one year to do so for elementary school students (in grade 6 and below) and up to three years to do so for students in grade 7 or above. As with physical education, these are not automatic waiting periods. Such an adjustment period may only be justified, by the recipient demonstrating:

    a. there are real barriers to achieving immediate parity for students of both sexes. (Lack of a female coach to supervise the locker room for female students is not a justification for a delay.)

    b. steps are being taken, with a specific timetable for their implementation, to overcome the barriers so identified.

Note - Persons conducting compliance reviews should be mindful of the fact that the focus of the athletic section is on equal opportunity and not on equality of expenditures. Clearly, the cost of running a male football team will far exceed the costs of running a female field hockey team due to differences in equipment, numbers of team participants, etc.

The Department has eschewed any standards or administrative enforcement methods which make compliance depend upon financial analyses, detailed reviews of athletic budgets, the flow or earmarking of funds and determinations of the equitability of fund distribution, per se, between women's and men's athletic programs.

B. Data to be obtained. (Items starred should be obtained prior to going on-site.)

1. For each school, list by sport and level (i.e. intramural, varsity, junior varsity) the number of teams engaged in competition, including the number of:

    *a. all-male teams and number of members on a team;

    *b. all-female teams and number of members on a team;

    *c. mixed teams (how many males and fema are on each team?)

*2. A list of the number of competitive events each of the teams has scheduled.

*3. A list of the coaches, by name and sex, for each of the above teams.

4. The salaries each of the above receives for coaching.

*5. Total amount of practice time each team is allotted and a description of the practice facilities and specific time periods allotted each team for their use.

*6. Facility or facilities used by each team for competition and its scheduled (date, time) use of these facilities.

7. Provisions made for transporting each team to competitive events away from home, including the events away from home in which each team participates, where each team plays, mode or modes of transportation used by each team, and per diem allowance, if any, for each team.

*8. Copies of rules or by-laws of any interscholastic athletic association or league in which the recipient or the teams participate.

9. Copies of any publicity furnished to media about sports events or about individual team members during the past year.

10. Inspect and describe the extent to which the training, practice, locker room and shower facilities available to members of each sex are comparable.

11. Inspect and describe the extent to which equipment and uniforms provided members of each sex are comparable.

12. Ask coaches and team members what differences they perceive in provisions made for competition by males and females.

13. Do cheerleaders and the pep band perform at both boys' and girls' competitive events? Are there pep rallies for both?

14. Interview athletic directors, coaches, physical education teachers, and students (particularly student athletes) to determine to what extent they think the interests and abilities of members of both sexes have been effectively accommodated.

15. Find out what means a recipient employs to evaluate the extent to which it is effectively accommodating the interests and abilities of members of both sexes.

16. Where members of both sexes do not currently have equal opportunity in a recipient's athletic program:

    a. what steps are being taken to provide equal opportunity?

    b. what are the barriers to their immediate implementation?

XIII. ATHLETICS

1. Suggested Action Steps for SEAs.

- Ensure that the State Athletic Association regulations do not discriminate.
- Ensure that state-sponsored training activities are open to all eligible teachers/coaches/participants.
- Provide technical assistance to LEAs in interpretation of regulations by offering in-service training.
- Make appropriate resource materials available.

2. Suggested Action Steps for LEAs.

- Become conversant with the regulations in order to overcome past discrimination effects.
- Examine local athletic programs to ensure that they are in compliance.
- Take affirmative action to bring athletic programs into compliance.
- Ensure that appropriate in-service training be provided for coaches, teachers, etc.

3. Questions & Answers

3.1 Question:

In athletics, what is equal opportunity?

Answer:

In determining whether equal opportunities are available, such factors as these will be considered:

- Whether the sports selected reflect the interests and abilities of both sexes;
- Provision of supplies and equipment;

- Game and practice schedules;
- Travel and per diem allowances;
- Coaching and academic tutoring opportunities and the assignment and pay of the coaches and tutors;
- Locker rooms, practice and competitive facilities;
- Medical and training services;
- Housing and dining facilities and services;
- Publicity.

3.2 Question:

Must an institution provide equal opportunities in each of these categories?

Answer:

Yes. However, equal expenditures in each category are not required.

3.3 Question:

What sports does the term "athletics" encompass?

Answer:

The term "athletics" encompasses sports which are a part of interscholastic, intercollegiate, club or intramural programs.

3.4 Question:

When are separate teams for men and women allowed?

Answer:

When selection is based on competitive skill or the activity involved is a contact sport, separate teams may be provided for males and females, or a single team may be provided which is open to both sexes. If separate teams are offered, a recipient institution may not discriminate on the basis of sex in providing equipment or supplies or in any other manner.

Moreover, the institution must assure that the sports offered effectively accommodate the interests and abilities of members of both sexes.

3.5 Question:

If there are sufficient numbers of women interested in basketball to form a viable women's basketball team, is an institution which fields a men's basketball team required to provide such a team for women?

Answer:

One of the factors to be considered by O.C.R./H.E.W. in determining whether equal opportunities are provided is whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes. Therefore, if a school offers basketball for men and the only way in which the institution can accommodate the interests and abilities of women is by offering a separate basketball team for women, such a team must be provided.

3.6 Question:

If there are insufficient women interested in participating on a women's track team, must the institution allow an interested woman to compete for a slot on the men's track team?

Answer:

If athletic opportunities have previously been limited for women at that school, it must allow women to compete for the men's team if the sport is a non-contact sport such as track. The school may preclude women from participating on a men's team in a contact sport. A school may preclude men or women from participating on teams for the other sex if athletic opportunities have not been limited in the past for them, regardless of whether the sport is contact or non-contact.

3.7 Question:

Can a school be exempt from Title IX if its athletic conference forbids men and women on the same non-contact team?

Answer:

No. Title IX preempts all state or local laws or other requirements which conflict with Title IX.

3.8 Question:

How can a school athletics department be covered by Title IX if the department itself receives no direct Federal aid?

Answer:

Section 844 of the Education Amendments of 1974 specifically states that: "The Secretary shall prepare and publish...proposed regulations implementing the provisions of Title IX of the Education Amendments of 1972 relating to the prohibition of sex discrimination in Federally-assisted education programs which shall include with respect to intercollegiate athletic activities reasonable provisions considering the nature of particular sports."

In addition, athletics constitutes an integral part of the educational processes of schools and colleges and, thus, are fully subject to the requirements of Title IX, even in absence of Federal funds going directly to the athletic programs.

The courts have consistently considered athletics sponsored by an educational institution to be an integral part of the institution's education program and, therefore, have required institutions to provide equal opportunity.

3.9 Question:

Does a school have to provide athletic scholarships for women?

Answer:

Specifically, the regulation provides: "To the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics."

3.10 Question:

How does a school determine interest in athletics and how often is a survey of students required?

Answer:

In an initial survey, the school must use the most effective means of determining interest. A continuing awareness is important although there is no required time line other than that specifying an initial survey.

3.11 Question:

To what extent must financing be equitable for both boys' and girls' sports, recognizing that certain sports require special expensive protective gear?

Answer:

Based upon a new policy statement relating to intercollegiate sports:

- Determine the per capita expenditures for both male and females;
- Expenditures should be comparable per capita.

The key is that equal services should be provided. Thus, if the best protective gear is purchased for one sport, the same quality of goods should be purchased for all sports as needed.

3.12 Question:

Must a school offer an equal number of sports or sports' teams for both boys and girls?

Answer:

No. Equal numbers of teams is not a criterion; it is equality based upon interest.

Mirror images are not required, but interest and need must be represented.

3.13 Question:

To be in compliance must the girls' program duplicate the boys' program?

Answer:

No. Just because there are 3 basketball teams for boys does not mean there have to be 3 for girls. It is required only if the interest indicates a need. It may be the need is for 3 volleyball teams and only 2 basketball squads.

3.14 Question:

Must the girls be allowed to try out for contact sport teams such as football and basketball when separate teams are not offered for girls?

Answer:

Title IX permits, but does not require that schools allow girls to try out for contact sport teams. However, it is suggested that schools review state laws in this respect as well as federal consitutional cases

3.15 Question:

Can schools deny girls the opportunity to try out for the boys' baseball team, because there is a girls' softball team?

Answer:

No, because baseball is not a contact sport and is a different sport than softball. Girls must be permitted to try out if girls have less athletic opportunities in the overall program.

3.16 Question:

Must the quality of coaching be equal or equitable for both boys' and girls' teams? What standard is used to judge quality?

Answer:

The criteria for assigning coaches to teams should be the same and not be based upon the sex of athletes or coaches.

The LEA should define the quality standards and these standards should be applied equally.

Past experience in coaching may have an adverse effect on one sex. Schools should review employment practices related to affirmative action and provide training programs where needed.

3.17 Question:

Does the placement of a sport outside the traditional season constitute a violation of Title IX; for example, girls' basketball played in the Spring?

Answer:

Yes, if it limits competition because there are no other teams to play at that season or if it imposes a hardship because of weather.

3.18 Question:

Does Title IX require the scheduling of practices and/or games equally at prime time?

Answer:

The opportunity to compete before an audience must be equal. Schools must apply the same criteria and standards consistently. Scheduling can vary depending upon the level of competition and by sport. Providing equal opportunity may necessitate the rotation of schedules.

3.19 Question:

If admission is charged, must it be the same for boys' and girls' sports?

Answer:

Admission should be realistic. Schools must consider the effect on audience participation. Title IX does not require that admission be charged for all games as long as money received for admission to any game is used on an overall sports program.

3.20 Question:

Is it equitable to have cheerleaders assigned only to boys' teams?

Answer:

No. Support services should be provided equally. The same is true of emphasis on the sport, and in publicity, etc.

3.21 Question:

Would any co-ed sports that require a certain number of participants on each team, by sex, badminton for example, be a violation of Title IX?

Answer:

No - it depends on the nature of the sport and whether there are established teams such as mixed doubles in tennis. The criteria used must effectively accommodate the interests and needs of students.

3.22 Question:

Are G.A.A.'s allowed?

Answer:

If the G.A.A. is currently operating as a social, recreational club dealing with sports, then it must be opened up to boys. However, if the G.A.A. is currently the girls' interscholastic program, then it may be open only to girls. Ideally schools will move toward a S.A.A.(Student Athletic Assn.).

3.23 Question:

In intramural sports, can a school have a girls' volleyball team if all who come out are eligible to participate in intramurals?

Answer:

No. Separate teams are legitimate only in contact sports.

3.24 Question:

How do the individual rights of males or females enter into Title IX as opposed to the overall rights of one particular sex? For example, a boy wants to play on a volleyball team that was previously all girls and is denied the opportunity to play because of his sex.

Answer:

In the area of athletics, Title IX looks into the overall opportunity of a class of individuals and assesses by class.

3.25 Question:

How long will the "past discrimination" clause allow exclusion of boys from trying out for the girls' volleyball team because there is no boys' volleyball team?

Answer:

If equality of opportunity in the program is maintained by having a girls' volleyball team and other teams for boys, then the program is legitimate. However, if there is a growing interest in volleyball by boys, then the school should establish a boys' team. A team must be opened up for the excluded sex only if there is inequality. It is then opened up until there is equality. (There are and have been many other opportunities for boys.) A school must look at the abilities and interests when deciding about offering teams and opening up teams.

3.26 Question:

Are female students receiving unequal treatment if coaches of boys' teams are paid more than coaches of girls' teams?

Answer:

If the effect of such a pay policy is that better qualified coaches end up as boys' teams coaches, then there is discrimination.

If girls' coaches suffer from a lack of time or receive less pay, then there is a discriminatory effect. The district should set standards for job expectations.

3.27 Question:

What responsibility does the school have for ensuring equal publicity under Title IX?

Answer:

The school has responsibilities both internally and externally. Internally, the school has the responsibility to provide equal publicity in its yearbook pages and through the school newspaper. Externally, the school has the responsibility to send out equal information to the local media and to encourage equal coverage.

3.28 Question:

If a school belongs to an athletic league that requires its members to adhere to discriminatory rules or practices, such as different lengths of seasons for like sports for boys and girls, may it continue membership in the league?

Answer:

The school can try to get the league to change its rules, but it is obliged to withdraw under Title IX as it cannot participate in discriminatory rules or practices.

4. Case References

Case law currently reflects dichotomous findings and most results are being appealed.

Sims v. Etowah County Board of Education

Cape v. Tennessee Secondary School Athletic Association

Yellow Springs School District v. Ohio High School Athletic Assn.

Moreland v. Western Pennsylvania Interscholastic Athletic League

5. Suggested Documentation

5.1 SEAs

- Records of correspondence, inservice efforts, publicity
- Records of assistance offered to districts, leagues, regions, etc.
- Samples of non-sexist scheduling, funding, provision of support services, etc.

5.2 LEAs

- All data listed on pages 36-37 of this document

XIV. Codes of Conduct (Including Dress Codes) and Other Regulations Governing Students (Subpart D, Section 86.31 (b)(4-6))

§ 86.31 Education programs and activities.

(a) *General*. Except as provided elsewhere in this part, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives or benefits from Federal financial assistance. This subpart does not apply to actions of a recipient in connection with admission of its students to an education program or activity of (1) a recipient to which Subpart C does not apply, or (2) an entity, not a recipient, to which Subpart C would not apply if the entity were a recipient.

(b) *Specific prohibitions*. Except as provided in this subpart, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:

(4) Subject any person to separate or different rules of behavior, sanctions, or other treatment;

(5) Discriminate against any person in the application of any rules of appearance;

(6) Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;

A. Basic Principles - A recipient may not on the basis of sex:

1. subject any person to separate rules of behavior or other treatment;

2. apply different standards for determining compliance with such rules;

3. mete out different punishments or penalties for violations;

4. apply different rules of appearance, including different regulations governing length of hair. In addition, regulations prohibiting beards or moustaches, as they basically only apply to males, are prohibited. In reviewing dress codes, apply a rule of reason. While recipients should be encouraged to adopt dress codes that are not gender specific, i.e. "neat", "clean," "appropriate," the regulations should not be followed so strictly so that to apply it specifically would be disruptive to the educational process. Thus, a regulation requiring male students to wear slacks and requiring female students to wear either skirts or slacks would not be a violation.

B. Data to be obtained. (Items starred should be obtained in advance.)

*1. copies of student handbooks or other statements setting forth any rules or regulations governing student behavior or appearance;

*2. copies of student handbooks or other statements setting forth regulations governing punishments or penalties, including suspensions and expulsions;

3. on-site, records of disciplinary action taken against students, including the:

   a. sex of student;

   b. nature of offense;

   c. type of action taken (detention hall, paddling, days suspended, etc.)

4. name and sex of individuals who have responsibility for determining or enacting disciplinary sanctions. Does the sex of the individual meting out punishment depend upon the sex of the student upon whom the sanction is imposed? Are only individuals of one sex responsible for discipline? If so, why?

XIV. CODES OF CONDUCT

1. Suggested Action Steps for SEAs.

- Adopt a policy statement describing its function regarding Codes of Conduct for Students. Include in this statement all state laws which are applicable to the issue.
- Provide assistance to LEAs in helping them develop their Student Codes of Conduct.
- Collect examples or prototypes of Student Rights Handbooks which have been developed and make them available to LEAs.

2. Suggested Action Steps for LEAs.

- Develop written policies, rules and regulations describing Codes of Conduct for Students.
- Make available to school personnel, students and parents a description of successes in implementing these policies, rules, etc.
- Establish an internal monitoring and data collecting system to evaluate the implementation of the Codes of Conduct for Students.

3. Questions & Answers

3.1 Question:

Does a LEA have an obligation to examine its implementation of policies and practices regarding expulsion, suspension, corporal punishment and other disciplinary measures?

Answer:

All LEAs are urged to do this as part of the data they should collect. All LEAs are urged to do this annually. Title IX regulations prohibit applying separate rules of behavior to any person; prohibit using different standards to determine compliance with rules; and prohibit meting out on a sex-segregated basis different punishments or penalties for violations.

LEAs should keep on-site records of all disciplinary action taken against students. These records should include sex of students, nature of offense, and type of action taken.

3.2 Question:

May a LEA establish rules and regulations related to dress and hair length on the basis of sex?

Answer:

Yes, and it is suggested that the LEA use the rule of reason in developing codes. LEAs should develop and distribute Student Handbooks or other statements which set forth rules or regulations governing student appearance.

4. Case References

Trent v. Perritt, 391 F. Supp. 171 (S.D. Miss. 1975) (hair length)

Samuel v. Univ. of Pittsburgh, 375 F. Supp. 1119 (W.D. Pa. 1974)

5. Suggested Documentation

5.1 SEAs

- Records of efforts made to notify LEAs and/or county counsels about this aspect of the law
- Copies of related State laws
- Samples of non-sexist conduct procedures
- Records of inservice efforts
- Copies of current O.C.R. interpretations regarding these issues.

5.2 LEAs

- Copies of student handbooks or other statements setting forth regulations governing student behavior or appearance should be available at all times
- Copies of student handbooks or other statements governing punishments or penalties including suspension and dismissal should be available to students
- Data should be collected on implementation of policies governing student conduct

XV. Honors and Awards - (Subpart D, Section 86.31(b)(1-3)(7))

§ 86.31 Education programs and activities.

(b) *Specific prohibitions.* Except as provided in this subpart, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:

(1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;

(2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;

(3) Deny any person any such aid, benefit, or service;

(7) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees;

(8) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

A. Basic Principles - An LEA may not:

1. differentiate on the basis of sex in bestowing awards - for example, award letters to outstanding male athletes and certificates to outstanding female athletes;

2. sponsor activities or clubs that limit membership to one sex - for example, separate letter clubs or honor societies for girls and boys;

3. bestow awards on the basis of sex - for example, outstanding boy and outstanding girl. It may give awards to outstanding students, some or all of whom may be male or female. For such honors as Homecoming Queen, Mardi Gras King, etc., the overall opportunities for males and females to be selected should be comparable.

4. have different criteria on the basis of sex for selection - for example, a higher grade point average for members of one sex than for the other for eligiblity for membership in an honor society.

B. Data to be obtained. (Items starred should be obtained prior to going on-site.)

*1. For elementary, junior high and high schools, a list of all organizations including athletic organizations, for which students are selected on the basis of achievement, services or a combination of both, and the membership in each such organization broken down by sex.

*2. For junior high and high schools, a list of any prizes, awards, or scholarships awarded to students in the past three years, including the name and sex of each recipient and a description of the extent to which the school or LEA participates in the nomination and selection process. (Again, you should limit initial requests to a sampling of each type of school in large districts.)

3. On-site, obtain copies of yearbooks and graduation programs for the past three years for each junior high and high school. (Check the honorary organizations, prizes, scholarships, and awards listed in one or the other against the list provided you by LEA.)

4. Interview high school principals and counselors to obtain their assessment of the scholarship and other financial aid opportunities available to boys and girls. Find out what role the school plays in helping students obtain scholarships or other financial aid.

5. Find out if notices are posted of scholarships or other financial aid for which students may apply and in what other ways students are informed of assistance available to them. Does the school process applications for scholarships elsewhere that are available to only members of one sex?

XV. HONORS AND AWARDS

1. Suggested Action Steps for SEAs.

- Examine the need to develop state-wide legal and procedural guidelines regarding the awarding of honors and awards.
- Provide assistance to the LEA in developing policy regarding the awarding of honors and awards.
- Gather examples of non-sexist policies and practices used successfully by LEAs. Share with others.
- Include this issue in all inservice presentations.

2. Suggested Action Steps for LEAs.

(Excluding sports)

- Develop policies and administrative regulations regarding awards and honors.
- Establish appropriate monitoring and review system.
- Use above information to take corrective action.
- Provide staff development.
- Provide community education regarding requirements of Title IX.

(In cases related to sports)

- Ensure that comparable awards are provided for boys and girls.
- Ensure that schools have only one letter club - not boys' or girls'.
- Inform the community as to equitable awards philosophy.
- Encourage booster clubs to support overall athletic program.

3. Questions & Answers (Excluding Sports)

3.1 Question:

May an "Outstanding Boy" award be given as long as a comparable "Outstanding Girl" award is given?

Answer:

No. However, awards may be given to "Outstanding Student," some or all of whom may be male or female. The criteria for choosing an "Outstanding Student," though, cannot be sex-related.

3.2 Question:

May a school assist in awarding of a sex-restrictive award or scholarship?

Answer:

No. A school may not bestow awards on the basis of sex. The school might seek to change the sex-restrictive aspect of the award or scholarship to make it comply with the requirements of Title IX.

3.3 Question:

May a school select a homecoming queen?

Answer:

Yes, as long as the overall opportunities for males and females to be selected are comparable.

Questions & Answers (In cases related to Sports)

3.4 Question:

Can a school recognize the "male" and "female" athletes of the year?

Answer:

Yes, awards are to be given on the basis of athletic skill. The skill levels of boys and girls may be different, and the law allows this to be recognized.

3.5 Question:

If an outside organization donates an award designated for a boys' team, can the school accept it?

Answer:

Yes, as long as the school's overall program provides comparable awards and emphasis for girls' teams.

3.6 Question:

Can the boys' and girls' awards be different provided that the monetary value is comparable?

Answer:

The awards may be different if they are of comparable monetary value; of comparable significance to the students; and are not sex-stereotyped awards. A choice of awards could be offered to both sexes.

3.7 Question:

Can we have separate letter clubs for boys and girls?

Answer:

No. Entrance/membership into a letter club requires no specific skill -- one must only be an athlete. Only where different skill levels are the criteria, as on a team, may boys and girls be distinguished.

3.8 Question:

Must the criteria for awarding letters to boys and girls be the same?

Answer:

The same criteria should be applied unless the use of a single standard would adversely affect athletes because of their sex.

3.9 Question:

Can an outside group host a single sex athletic team (such as boys' basketball) at an awards program?

Answer:

Yes, if the school sees to it that comparable services are provided for both girls' and boys' teams.

3.10 Question:

Can the school sponsor the football awards dinner?

Answer:

Yes, provided that comparable activities are held for girls' teams. A fall sports banquet might be given to accommodate both boys' and girls' teams.

4. Case References

No case law at this time.

5. Suggested Documentation

5.1 SEAs

- Maintain logs of procedures and guidelines for distribution to LEAs.

5.2 LEAs

- See page 41 of this document, #1, 2 and 3.

XVI. Employment Practices and Policies. (Subpart E, Sections 86.51-86.61)

A. Basic Principles

1. Sex discrimination in employment (including recruitment, selection, transfer, referral, retention, dismissal, membership) in educational programs or activities, whether professional or non-professional, is prohibited.

2. Employment decisions must be made in a nondiscriminatory manner.

3. Contractual or other relationships which have the effect of subjecting employees to discrimination on the basis of sex are prohibited, including relationships or collective bargaining agreements with:

    a. employment and referral agencies;

    b. labor unions;

    c. professional organizations;

    d. organizations providing or administering fringe benefits.

4. Employer-sponsored activities, including social and recreational programs, which discriminate on the basis of sex are prohibited.

5. Recipients may not recruit primarily at educational institutions, schools or other organizations which admit only or predominantly members of one sex if to do so has an effect of discriminating on the basis of sex.

6. Recipients may not grant preference to applicants for employment who attended an educational institution which enrolls only or predominantly students of one sex if to do so has an effect of discriminating on the basis of sex..

7. Recipients may not discriminate in the provision of fringe benefits which are defined as any medical, hospital, accident,, life insurance or retirement benefit, service, policy or plan, any profit-sharing or bonus plan, leave, and any other benefit or service of employment. Specifically, recipients may not:

§ 86.51 Employment.

(a) *General.* (1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefor, whether full-time or part-time, under any education program or activity operated by a recipient which receives or benefits from Federal financial assistance

(2) A recipient shall make all employment decisions in any education program or activity operated by such recipient in a nondiscriminatory manner and shall not limit, segregate, or classify applicants or employees in any way which could adversely affect any applicant's or employee's employment opportunities or status because of sex.

(3) A recipient shall not enter into any contractual or other relationship which directly or indirectly has the effect of subjecting employees or students to discrimination prohibited by this Subpart, including relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees of the recipient.

(4) A recipient shall not grant preferences to applicants for employment on the basis of attendance at any educational institution or entity which admits as students only or predominantly members of one sex, if the giving of such preferences has the effect of discriminating on the basis of sex in violation of this part.

(b) *Application.* The provisions of this subpart apply to:

(1) Recruitment, advertising, and the process of application for employment;

(2) Hiring, upgrading, promotion, consideration for and award of tenure, demotion, transfer, layoff, termination, application of nepotism policies, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation, and changes in compensation;

(4) Job assignments, classifications and structure, including position descriptions, lines of progression, and seniority lists;

(5) The terms of any collective bargaining agreement;

(6) Granting and return from leaves of absence, leave for pregnancy, childbirth, false pregnancy, termination of pregnancy, leave for persons of either sex to care for children or dependents, or any other leave;

(7) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(8) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, selection for tuition assistance, selection for sabbaticals and leaves of absence to pursue training;

(9) Employer-sponsored activities, including social or recreational programs; and

(10) Any other term, condition, or privilege of employment.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.52 Employment criteria.

A recipient shall not administer or operate any test or other criterion for any employment opportunity which has a disproportionately adverse effect on persons on the basis of sex unless:

(a) Use of such test or other criterion is shown to predict validly successful performance in the position in question; and

(b) Alternative tests or criteria for such purpose, which do not have such disproportionately adverse effect, are shown to be unavailable.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.53 Recruitment.

(a) *Nondiscriminatory recruitment and hiring.* A recipient shall not discriminate on the basis of sex in the recruitment and hiring of employees. Where a recipient has been found to be presently discriminating on the basis of sex in the recruitment or hiring of employees, or has been found to have in the past so discriminated, the recipient shall recruit members of the sex so discriminated against so as to overcome the effects of such past or present discrimination.

(b) *Recruitment patterns.* A recipient shall not recruit primarily or exclusively at entities which furnish as applicants only or predominantly members of one sex if such actions have the effect of discriminating on the basis of sex in violation of this subpart.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.54 Compensation.

A recipient shall not make or enforce any policy or practice which, on the basis of sex:

(a) Makes distinctions in rates of pay or other compensation;

(b) Results in the payment of wages to employees of one sex at a rate less than that paid to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.55 Job classification and structure.

A recipient shall not:

(a) Classify a job as being for males or for females;

(b) Maintain or establish separate lines of progression, seniority lists, career ladders, or tenure systems based on sex; or

(c) Maintain or establish separate lines of progression, seniority systems, career ladders, or tenure systems for similar jobs, position descriptions, or job requirements which classify persons on the basis of sex, unless sex is a bona-fide occupational qualification for the positions in question as set forth in § 86.61.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

a. discriminate on the basis of sex in making fringe benefits available to employees;

b. make fringe benefits available to spouses, families or dependents of employees differently on the basis of the employee's sex;

c. administer, operate, offer or participate in a fringe benefit plan which does not provide *either* for equal periodic benefits for members of each sex *or* for equal recipient contributions to the plan for members of each sex;

d. administer, operate, or participate in a pension or retirement plan which establishes different optional or compulsory retirement ages for each sex or otherwise discriminates in benefits on the basis of sex.

Note that a recipient is not automatically required to provide permanent part-time employees fringe benefits proportionate to those provided full-time employees where its female (or male) permanent employees are disproportionately part-time or its permanent part-time employees are disproportionately female (or male). In order to require proportionate benefits for part-time employee in such situations, OCR must demonstrate that a particular method of providing (or not providing) fringe benefits to part-time employees is discriminatory on the basis of sex.

8. The process of selection of employees from a pool of qualified applicants must follow procedures designed to ensure nondiscrimination. Selection standards and procedures must not distinguish on the basis of sex or be applied inconsistently so as to deny equality of opportunity for males and females (The references to selection procedures are meant to apply to any employment decision, including hire, transfer, promotion, membership, training, referral, or retention.) Recipients should be advised that selection criteria, tests, and other assessment

§ 86.56 Fringe benefits.

(a) *"Fringe benefits" defined.* For purposes of this part, "fringe benefits" means: any medical, hospital, accident, life insurance or retirement benefit, service, policy or plan, any profit-sharing or bonus plan, leave, and any other benefit or service of employment not subject to the provision of § 86.54.

(b) *Prohibitions.* A recipient shall not:

(1) Discriminate on the basis of sex with regard to making fringe benefits available to employees or make fringe benefits available to spouses, families, or dependents of employees differently upon the basis of the employee's sex;

(2) Administer, operate, offer, or participate in a fringe benefit plan which does not provide either for equal periodic benefits for members of each sex, or for equal conrtibutions to the plan by such recipient for members of each sex; or

(3) Administer, operate, offer, or participate in a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex or which otherwise discriminates in benefits on the basis of sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.57 Marital or parental status.

(a) *General.* A recipient shall not apply any policy or take any employment action:

(1) Concerning the potential marital, parental, or family status of an employee or applicant for employment which treats persons differently on the basis of sex; or

(2) Which is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.

(b) *Pregnancy.* A recipient shall not discriminate against or exclude from employment any employee or applicant for employment on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

(c) *Pregnancy as a temporary disability.* A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom and any temporary disability resulting therefrom as any other temporary disability for all job related purposes, including commencement, duration and extensions of leave, payment of disability income, accrual of seniority and any other benefit or service, and reinstatement, and under any fringe benefit offered to employees by virtue of employment.

(d) *Pregnancy leave.* In the case of a recipient which does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status which she held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

techniques, which impact adversely on either sex, must be job-related and be valid predictors of job performance. (While in theory the previous statement applies to such criteria as degrees and state certification requirements, means are not available at this time to test their validity as predictors of job performance and OCR should limit inquiries in this area to determining the extent to which such criteria are consistently applied.)

9. Of qualified applicants for particular positions, men and women should be selected in reasonable proportion to their availability in the labor pool. The labor pool includes employed, underemployed and unemployed individuals. An employer utilizing nondiscriminatory or affirmative recruitment procedures should obtain an applicant pool that reflects the proportion of men, women and minorities in the labor pool. If an LEA's applicant pool does not reflect the composition of the labor pool, it must be required both to demonstrate that its recruitement procedures are indeed nondiscriminatory and to provide an explanation of the discrepancy between the composition of its applicant pool and the labor pool. Selection of applicants should reasonably reflect the proportion of men and women in the applicant pool at the time of selection.

10. Employment practices/procedures as they relate to the potential or actual marital, parental, or family status of an employee or applicant for employment are prohibited when such persons are treated differentially on the basis of sex. Under the regulation, pre-employment inquiries about an individual's marital status (Miss or Mrs. - single, married, divorced, etc.) are prohibited. A nepotism policy is permissible only if it impacts equally on members of both sexes.

11. Where a pattern exists in which members of one sex are more often assigned to, as opposed to hired in, lower ranks, levels, or classifications of job responsibility and status, the burden is placed on the employer (LEA) to demonstrate that such a pattern is not the result of discriminatory practices. Nevertheless, OCR should document as much

§ 86.58 Effect of State or local law or other requirements.

(a) *Prohibitory requirements.* The obligation to comply with this subpart is not obviated or alleviated by the existence of any State or local law or other requirement which imposes prohibitions or limits upon employment of members of one sex which are not imposed upon members of the other sex.

(b) *Benefits.* A recipient which provides any compensation, service, or benefit to members of one sex pursuant to a State or local law or other requirement shall provide the same compensation, service, or benefit to members of the other sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.59 Advertising.

A recipient shall not in any advertising related to employment indicate preference, limitation, specification, or discrimination based on sex unless sex is a *bona-fide* occupational qualification for the particular job in question.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.60 Pre-employment inquiries.

(a) *Marital status.* A recipient shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is "Miss or Mrs."

(b) *Sex.* A recipient may make pre-employment inquiry as to the sex of an applicant for employment, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.61 Sex as a bona-fide occupational qualification.

A recipient may take action otherwise prohibited by this subpart provided it is shown that sex is a bona-fide occupational qualification for that action, such that consideration of sex with regard to such action is essential to successful operation of the employment function concerned. A recipient shall not take action pursuant to this section which is based upon alleged comparative employment characteristics or stereotyped characterizations of one or the other sex, or upon preference based on sex of the recipient, employees, students, or other persons, but nothing contained in this section shall prevent a recipient from considering an employee's sex in relation to employment in a locker room or toilet facility used only by members of one sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

as possible any discriminatory practices that can be identified (in recruitment, hiring, assignment, conditions of work, benefits and rights, termination or lay offs, etc.)

12. Salaries for the same or comparable jobs and same or comparable responsibilities must be equal for men and women. Specific criteria for determining salaries for each job classification and within each job classification should be made known to all present and potential employees.

13. Policies, procedures, and criteria for selection should be in writing. The dissemination and application of such policies, etc. may not have a differential effect on the opportunities for selection and advancement of members of either sex.

14. Administrative internships, other inservice or apprenticeship training, staff development opportunities, and tuition grants or other compensation designed to prepare employees for promotion must be equally available to men and women or be designed to eliminate underrepresentation of members of one sex in the labor and applicant pools.

15. Leaves - medical, sabbatical, emergency, administrative (to attend conferences, professional meetings, and other related activities), and educational must be available to men and women on an equal basis. Of particular importance is that pregnancy and conditions related to it (miscarriage, abortion, childbirth) be treated as any other disability or medical absence. Where, since June 23, 1972, female employees were not permitted to apply accrued sick leave to maternity leave and employees were able to apply accrued sick leave to any other temporary disability, the recipient is required to offer such employees reimbursement for the amount of sick leave they could otherwise have applied. Reimbursement may be in the form of payment or administrative leave with pay.

16. Violations may occur in the absence of a specific intent to deny equal employment opportunities, as where an apparently neutral practice has an adverse impact on members of one sex. For example, in selecting a director of physical education, a district may have previous coaching experience as a criterion. This criterion would have an adverse impact on women if opportunities for them to be coaches had previously been limited.

17. Sex as a bona-fide occupational qualification mandated by business necessity is acceptable. In the educational field, however, exceptions on the basis of bona-fide occupational qualifications are narrowly construed and it is unlikely that many exist. Thus, although an attendant for the boys' locker room may be chosen on the basis of sex, selection of coaches may not be made on the basis of sex even if the students are all of one sex in the particular sports for which coaches are hired.

B. Information to be obtained. (Items starred should be obtained prior to any on-site review.)

*1. Organizational chart of school system personnel for both the administrative staff and for separate schools.

*2. The number and percentage of employees by sex for each major job classification (teacher, supervisor, administrator), by level (elementary, junior high, high, district-wide, sub-district wide). OCR should compare the figures obtained with the percentage of employees by sex in the available labor pool. NOTE: Check census, NEA, and Higher Education Division data for work force (active and potential) numbers and percentages.

*3. In the case of a specific complaint, position descriptions and salaries and descriptions of the qualifications and selection criteria for each position associated with the issues raised in the complaint. Included should be values given specific selection factors and a description of how weighting values were determined and used. (For a routine Title IX review (no complaint) you may want to request just a sampling of position descriptions at particular levels or schools; and secure more detailed data later on-site.)

*4. Published salary schedules for both professional and non-professional positions.

*5. Copies of application forms for both professional and non-professional positions.

*6. Average entry salary by sex. Average salary and grade of 5, 10, 15-year employees by sex. NOTE: this will give a double check on promotion in that average time in a grade may be fine, but salaries are out of line. More detailed data can be requested on-site, and the LEA should be notified that we may wish to inspect the data upon which such averages are computed should an on-site review be scheduled at a later date.

If a specific complaint has been made, more detailed data should be requested before going on-site such as:

Payroll data -

a. For professional staff

1) race and sex;

2) name - or other unique identifier;

3) job title and location of assignment;

4) highest degree or (if counted for salary purposes) highest degree and hours beyond that degree;

5) total years experience;

6) total years experience in school district;

7) yearly salary, including pay for extra assignments and description of such assignments;

8) number of months or days employed per year;

9) full-time or part-time;

10) dates of last two promotions.

b. For non-professional staff:

1) race and sex;

2) name - or other unique identifier;

3) job title and location of assignment;

4) number of years of schooling, highest grade (degree) obtained, if educational background is an employment criterion;

5) years employed in present position;

6) yearly salary;

7) hours of employment;

8) amount of extra pay received the previous school year;

9) assignment for which extra pay was awarded;

10) number of months or days employed per year;

11) full-time or part-time;

12) dates of last two promotions.

*7. Average time in grade (between promotions) of employees by sex. (Again notify the LEA that it may be necessary at a later date to review the data upon which the averages have been computed.)

*8. Copies of all policies relating to granting of leaves of absence, including those for temporary disabilities, extended medical leave, and for pregnancy and related conditions, which have been in effect since June 23, 1972.

*9. Copies of all collective bargaining agreements with both professional and non-professional employee groups.

*10. Copies or descriptions of any medical, hospital, accident, life insurance or retirement benefit, service policy or plan which the recipient has administered, offered, operated, or participated in since June 23, 1972.

*11. Descriptions of any administrative internships or training programs operated by the LEA or in which the LEA personnel participate, including:

   a. name and sex of individuals participating in such programs for the past five years;

   b. means used to inform potential applicants or enrollees of the program;

   c. criteria for selecting participa

*12. A list of institutions which employment recruiters visited, to which employment recruitment information (including notices of openings) was sent, or from which employment referrals were sought each of the past three years.

13. List of all extracurricular assignments undertaken by professional and non-professional staff including:

   a. name and sex of individual;

   b. brief description of assignment (choir director, etc.)

   c. amount of any additional salary received for the assignment;

   d. information needed to determine whether extracurricular activities undertaken by staff were voluntary or mandatory.

14. On-site, examine a sampling of applicant files for professional and non-professional staff (the number to be examined dependent

on requirements of the situation under review) to determine degree of correspondence between other findings - data provided prior to site visit as well as results of interviews with staff on-site. Examination of files should cover areas of concern described in A above - Basic Principles. In cases where there are specific complaints or where specific problem areas have been identified, it may be necessary to compare the personnel files, including evaluations, of individuals positively and negatively affected by the same practice. While you may determine that an individual was treated unfairly or without objectivity, in order to show a violation of Title IX, it is essential to show that such unfairness or lack of objectivity is on the basis of sex or impacts adversely on members of one sex as opposed to the other.

15. If the LEA has a formal policy on nepotism, obtain a written copy. If an informal policy and/or practice obtains, inquire about it of superintendents, principals, teachers, and other staff. Determine if the policy/practice adversely affects members of one sex as opposed to the other.

XVI. EMPLOYMENT PRACTICES AND POLICIES

1. Suggested Action Steps for SEAs.

- Provide guidance in writing job descriptions and announcements (samples), and on interview techniques (specific to each job).
- Assist LEAs in establishing pools of qualified applicants.
- Examine issues that seem to conflict (e.g. seniority vs. affirmative action) and clarify; and/or provide impetus for legislative change.
- Provide legal interpretation of interfacing State and Federal laws.
- Provide leadership in coordinating response to all discrimination laws as they relate to employment practices and policies.
- Coordinate the similar sex equity efforts of major agencies (SDAC, Commission on the Status of Women, LEAs, special projects).
- Publish the results of current court or O.C.R. interpretations and disseminate to all LEAs and county councils.
- Provide assistance to LEAs as requested.
- Include coverage of this issue in all inservice efforts.

2. Suggested Action Steps for LEAs.

- Examine all employment policies and regulations in district.
- Examine hiring policies, job descriptions and announcements, and interviewing techniques for compliance.
- Examine recruitment and selection procedures.
- Identify or develop a qualified pool of applicants for all positions, including training opportunities.

- Examine organizational structure (of administration and teaching) to see if alternatives exist to meet affirmative action goals (e.g. job sharing, rotational assignments).
- Insure that promotion and demotion procedures (e.g. seniority) are non-discriminatory.
- Coordinate all non-discrimination laws affecting the district in order to provide clarification and reduce confusion.

3. Questions & Answers

3.1 Question:

What are acceptable items and/or questions that may be asked during an oral interview?

Answer:

An interview panel may not ask or make inquiries as to:

- Age
- Sex
- Marital status
- Race
- Color
- National origin

Acceptable areas that may be delved into during an oral interview include:

- Items or qualifications pertaining to the job description.
- Previous experience.
- Experience related to the particular job.
- Prospective employee's interpretation of job requirements.

3.2 Question:

How can the predominantly male management system in many districts be counteracted and women be encouraged to advance?

Answer:

- Adhere to established affirmative action policies.
- Promote management training for those who are interested.
- Direct prospective female administrators to the proper in-services and conferences.
- Provide opportunities for administrative candidates to meet together to share experiences and concerns.
- Provide prospective female administrators with experience in leadership roles.

3.3 Question:

What are acceptable items on an employment application?

Answer:

A district may not make pre-employment inquiry as to:

- Age
- Sex
- Marital status
- Race
- Color
- National origin

Acceptable pre-employment items include:

- Qualifications as they pertain to the position.
- Credentials held and/or applied.
- Previous experience.
- Training and school units.
- References

3.4 Question:

What is appropriate criteria to be used in establishing coaching salaries?

Answer:

Criteria for establishing coaching salaries:

- Equal pay for equal work.
- Number of people served.
- Hours worked.
- Length of season?

Criteria that cannot be used:

- Prior experience.
- Public experience.
- Danger factor of sport.

3.5 Question:

What is an equitable way for a district to provide insurance to single and married employees?

Answer:

The district must have the same coverage for all regardless of marital status. It may offer options to employees--but each option may not be discriminatory.

3.6 Question:

What documentation in employment practices is required to meet the mandates of Title IX?

Answer:

There should, at least, be evidence of the following:

- That an affirmative action plan is in existence and being implemented.
- That equal pay is given for equal work.
- That the fringe benefits for male and female employees are equal.
- That work assignments are not made on the basis of sex.
- That any collective bargaining agreements are free from sexist codicils.
- Records of the number and percentages of employees in all job classifications are maintained and perused regularly.

- That any "socializing" functions include both male and female employees.

- That employment forms have eliminated sexist overtones.

- That intern programs for administrative advancement promote both male and female enrollment.

- That the granting of leaves and opportunities for conference attendance demonstrate non-sexist application.

- That the district policy dealing with nepotism is not biased to favor one sex over another.

3.7 Question:

How do you coordinate the procedures prescribed by the many non-discriminatory laws and collective bargaining?

Answer:

Coordination can be improved by:

- Selecting one person in the LEA to coordinate.

- Urging a centralized approach (at the State and Federal level) to data gathering to relieve the burden of repetitive reports on LEAs.

- Urging Federal and State legislative bodies to review laws that demand contradictory requirements for LEAs.

- Forming consortium of LEAs or counties to contract with an "expert" consultant to develop unbiased, job-related interview questions for all job classifications within those districts.

3.8 Question:

What procedures could a district use to initiate an administrative training program and/or develop more openings in administration?

Answer:

A district should consider these procedures:

- Adopt district policy to allow for an administrative training program using Title IX regulations.

- Encourage potential administrative candidates from within present staff.

- Advertise as widely as possible for candidates for any administrative opening.

3.9 Question:

How does the district comply with Title IX regulations and provide adequate locker room supervision?

Answer:

The district might consider some of these alternatives:

- Hire locker room supervisors.
- Assign extra duty supervisors.
- Assign existing coaches to supervise the appropriate locker room regardless of sport that the coach is coaching.

3.10 Question:

How does a district, utilizing various methods for temporary employment, ensure compliance with Title IX standards?

Answer:

A district can do the following:

- Establish standardized criteria for hiring temporary employees.
- Advertise the temporary position to the available labor pool.

3.11 Question:

How does a district establish appropriate job-related criteria which will ensure more participation of men and women in coaching?

Answer:

A district can take the following steps:

- Broaden the criteria of one job position to include both academic areas and coaching. Dual role must be clearly linked, to avoid the possibility in future years of the person hired saying he/she will not coach any more.
- Offer solely coaching contracts.
- Consider adopting State regulations which allow non-certificated personnel (no credential) to coach. Tort liability could be problem, however, and legal inquiry should precede any such action.

3.12 Question:

How is nepotism handled under Title IX regulations?

Answer:

Nepotism is permitted as long as it impacts equally on members of both sexes.

3.13 Question:

Can a school district sponsor a social event limited to members of one sex? (i.e., smoker, poker party, etc.)

Answer:

No. Employer-sponsored activities, including social and recreational programs, which discriminate on the basis of sex are prohibited.

3.14 Question:

What effect does Title IX have on a contract negotiated between an employer and an employee organization?

Answer:

Title IX takes precedence. A contract (or other relationship with an organization) which would have the effect of discriminating on the basis of sex is prohibited.

3.15 Question:

How can a district establish a qualified pool of applicants?

Answer:

A local district has to use many creative and innovative means to establish pools of applicants for various job categories (i.e., management, teachers, coaches, custodial, etc.). A district preservice and inservice program is one. For example, the criteria, knowledge, etc. desired for a principalship position can be established. This criteria, etc. can then be used as a foundation for an administrative training program operated by the district. Potential applicants can be encouraged to participate. Wide solicitation for applicants is another approach. A partnership can be developed with a nearby college to help screen and train applicants for a pool.

3.16 Question:

What are the things to look for in examining a district's leave policies in relation to Title IX?

Answer:

Leaves - medical, sabbatical, emergency, administrative, and educational - must be available to men and women on an equal basis. The wording and intent of each policy has to be considered for sexual bias. Particularly important is the districts' policy on pregnancy and conditions relating to it. This has to be treated as any other disability or medical absence.

3.17 Question:

In time of staff cutback, how can Title IX standards be kept?

Answer:

In areas where the Education Code requires seniority as the element in layoffs (e.g.: classified staff), the courts have held that seniority prevails. Where local or State laws do not intervene, however, districts may wish to exhibit affirmative action considerations in all staffing decisions.

4. Case References

Romeo Community Schools v. HEW et al

Regents of University of California v. Bakke

New Uniform Employment Regulations issued by Department of Labor

Califano v. Goldfarb - men receiving Social Security

Gilbert

Craig v. Boren - men receiving Social Security

Griggs v. Duke Power

Manhart v. City of Los Angeles (Retirement/Pension Contributions)

Reilly v. Robertson (Pension Income after Retirement)

Cleveland Board of Education v. LaFleur (Pregnancy - Leaves)

Nashville Gas v. Salty (Sick Leave, Pregnancy, and Seniority)

Califano v. Webster - men receiving Social Security (97Sct. 1192 (1977)

State AA and Federal laws

Seniority laws

5. Suggested Documentation

5.1 SEAs

- Sample Affirmative Action Plans
- Sample salary schedule, particularly for coaching.
- Sample job descriptions.
- Sample hiring & promotion procedures and policies (selection and testing)

- Sample fringe benefits policies on pregnancy related issues.
- Sample employment forms (applications).
- Recommended training programs or policies.
- Recommended leave of absence policies, including treatment of pregnancy.
- Sample nepotism policies.

5.2 LEAs

- Organization charts.
- Ethnic and sex breakout summaries for all jobs/classifications in the district.
- AA plan.
- Written position descriptions for each job.
- Written recruitment and selection procedures applied to each position.
- Salary schedules, including coaching pay and policies.
- Application forms.
- Salary comparisons of district employees by sex.
- Summary of ethnicity, sex, criteria and recruitment procedures used in filling each position.
- Written policies on leave of absences, insurance, nepotism.
- Records of fringe benefits.
- Copies of collective bargaining contracts.
- Insurance policies.

- Descriptions and criteria used for training programs and participation.
- Ethnic and sex breakout of participation in training programs.
- Listing of extracurricular assignments by sex and ethnicity.

XVII. Textbooks and Other Curricular Materials. (Section 86.42)

§ 86.42 Textbooks and curricular material.

Nothing in this regulation shall be interpreted as requiring or prohibiting or abridging in any way the use of particular textbooks or curricular materials.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Nothing in the regulation requires, prohibits, or abridges the use of particular textbooks or curricular materials. If you receive letters complaining about sex-role stereotyping or other forms of sex discrimination in textbooks, you may wish to use the following as a model for a response.

Dear ______________________________:

We have received your complaint about the Education County School District's use of a reading program which is allegedly discriminatory in its use of sex-role stereotypes.

The Office for Civil Rights is responsible for enforcing Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in educational programs and activities benefiting from Federal financial assistance. Textbooks and curricular material, however, are specifically exempted from the scope of the Title IX implementing regulation which became effective July 21, 1975 (copy enclosed).

Although we recognize that sex-role stereotyping and other sex bias in textbooks and curricular materials are serious problems, it was decided that the imposition of restrictions in this area could place the Department in a position of limiting free expression in violation of the First Amendment. Consequently, because of its nature, your complaint does not fall within our jurisdiction.

The Department assumes, however, that local education agencies will deal with the problem of sex bias in curricular materials in the exercise of their general authority and control over course content. You may therefore wish to review your concerns with Education County School officials. (Of course, if the complainant indicates the issue has already been called to the attention of the LEA, the preceding sentence should be omitted.)

Sincerely yours,

Director
Office for Civil Rights
Region ______

XVII. TEXTBOOKS AND OTHER CURRICULAR MATERIALS

1. Suggested Action Steps for SEAs.

- Review existing state mandates covering textbooks and curricular requirements.
- Consider formulation of new state mandates or changing existing mandates if necessary in order to cover the elimination of sexist content/portrayals.
- Review for sex bias and modify all state education publications to eliminate sexist overtones/content.
- Educate all field and staff representatives - especially support staff - in reference to Title IX and the need to avoid sexist behaviors/procedures.
- Develop awareness brochures and consistent policy guidelines for field use.
- Include coverage of textbooks and other curricular materials in technical assistance inservice activities.
- Develop/select a manual of criteria for eliminating sex bias in textbooks and curricular materials.
- Involve consumer groups in program input through large scale curriculum review. Publicize to create public awareness.
- Work with textbook publishers to identify exemplary non-sexist material and make such materials known to LEAs and consumer groups.

2. Suggested Action Steps for LEAs.

- Review revised state mandates.
- Assess district needs, with the help of the parent and consumer advisory committee, in order to comply with state mandates on textbooks and curricular materials.
- Seek technical assistance from SEAs and SDACs if necessary.

- Develop and implement action plan for in-service and involvement of school personnel, community and students.
- Utilize curriculum committee for modifying existing curricular materials, where possible and for selecting of new textbooks.
- Conduct ongoing monitoring to insure that sexist materials, once removed, do not reappear.

3. Questions & Answers

3.1 Question:
Does Title IX cover textbooks?

Answer:
No. While the Department recognizes that sex stereotyping in curricula and educational material is a serious matter, it is of the view that any specific regulatory requirement in this area raises constitutional questions under the First Amendment. The Department believes that local education agencies must deal with this problem in the exercise of their traditional authority and control over curriculum and course content.

3.2 Question:
Are there states which have already adopted social content criteria for textbook selection?

Answer:
Yes. Some of the states are California, Texas and Iowa. Information usually can be obtained by writing the textbook division of the SEA.

3.3 Question:
What can be done if funds are not budgeted to revise or replace sex-biased materials?

Answer:
Possible actions are:

Teachers can

- Select for class assignments situations which are not usually depicted as male oriented (e.g. girls are doctors, boys are nurses, etc.).
- Make sure that the success or failure of non-traditional assignments is not correlated with sex.

- Utilize local resource people to create non-sexist use of existing materials.
- Show developments in history, arts, etc. which accentuate the achievements of females.
- Have students write biographies of women.
- Develop a sexually neutral language for use in the classroom.
- Collect resumes of people in non-traditional roles and post or put in the school newspaper.

Districts can

- Publish "teachable moment" samples of how existing text-book materials can be adapted to become non-sexist.
- Train teachers to present a variety of male and female non-traditional activities to staff.

3.4 Question:
Are there other Federal laws affecting curriculum materials?

Answer:
Yes. Under Section 130, Title II, Vocational Education Act of 1976, there are optional funding categories that provide money to develop non-sexist instructional materials. It requires that the state have a person trained in recognizing sex-biases to coordinate activities to overcome sex stereotyping in vocational education.

3.5 Question:
How can school personnel be dealt with who do not want to cooperate with a board adopted plan?

Answer:
The following are suggested methods to use:

- Assess the extent of sex-stereotyping and bias in the school (examining enrollments, for example, in advanced math and science and in vocational courses).
- Conduct small group meetings to present this material, focusing on participants' self-interest (for example, ask how the school can keep more females in math if it becomes optional).
- Present research, materials, and information showing how children are disadvantaged by sex-stereotyping in textbooks (e.g. Weitzmann's study).

- Present examples of model programs, strategies, and materials that have been found to work.

- Make school people aware of state and Federal programs available for developing non-sexist materials (WEEA, Title IV-C, for example).

- Reinforce small, positive steps toward cooperation with large amounts of encouragement and support.

3.6 Question:

What if an existing plan does not work for a particular school?

Answer:

The LEA personnel should be sensitive to the fact that plans can be adapted and modified to fit specific needs and areas, and that other plans can be tried.

3.7 Question:

What can be done to encourage writers to develop non-sexist curricular materials?

Answer:

Publishers have developed guidelines. These can be obtained and made available to writers to make their tasks easier.

Writers and publishers can be invited to awareness workshops where they can receive information about the importance of non-sexist material.

Curriculum councils can provide direct input to publishers.

Arrange for pressure groups to write publishers to insist that they develop non-sexist materials.

3.8 Question:

What non-sexist curricular materials and textbooks resources are available and who should be made aware of their existence?

Answer:

Some resources of available materials are:

- The Women's Educational Equity Communications Network (San Francisco).

- Annual reports from WEEAP (USOE), report on products being developed nationally to promote educational equity for women and girls.

- The Education Development Center (Newton, Mass) distributes some WEEAP products.

- The Government Printing Office (GPO) in Washington, D.C., periodically publishes a list of available resources related to sex equity.

- Regional SDAC, resource centers and SEAs have nationally and locally-developed lists of non-sexist materials.

Several specific groups could be used as information links to disseminate knowledge of non-sexist materials. These groups include:

- State library associations
- Textbook publishers
- LEA purchasing agents
- Curriculum groups
- Audio-visual associations
- Teacher colleges and teacher trainers

3.9 Question:
How can people in different roles be depicted without breaking down cultural traditions?

The following are some of the methods that can be used:

- Present contributions of ethnic and cultural groups to reinforce self images.

- Expand students identification with all fields of work and occupations.

- Develop Career Education units based on current contributions of culturally diverse people in our society.

- Develop a handbook of resource people who can participate in Career Education Day

- Portray members of various multi-cultural groups who have contributed to science, art, sports, music, etc.

- Portray members of various culture groups who have prominent non-traditional positions.

- Develop a handbook on the role and contributions of minorities (including women) in business, labor, education, etc.

3.10 Question:

How can the effects of negative counseling materials be overcome?

Answer:

The following are some suggestions:

- Create awareness among counselors that they are using sexist materials and show them the disadvantages to students.
- Suggest ways counselors might substitute non-sexist materials.
- Provide counselors with non-sexist materials rather than giving them only lists of resources.
- Introduce models of males and females in non-traditional roles and occupational fields in the classroom.
- Encourage site visits to companies where males and females work in non-traditional careers and invite such persons to speak to classes.
- Assign students to interview someone in, or report on, a non-traditional occupation that they might be interested in pursuing.
- Schedule speakers and programs on non-traditional careers for PTA meetings and back-to-school nights.

3.11 Question:

How can instructors take advantage of teachable moments as sexist passages in materials and occurrences in the classroom arise?

Answer:

Here are some suggestions of ways in which teachers can make the most of sexist materials and events:

- Have students read the story and pretend the characters are of the opposite sex.
- Have the students reverse roles and play out incidents.
- Have students rewrite parts of the book or story.
- Have students change "he's" to "she's"
- Change "man" to "person" in the book.

- Count the number of women in pictures and compare to the number of men.
- Use the end of class time to talk about stereotyping.

3.12 Question:

What can be done if there are no non-sexist books in a particular area?

Answer:

The following are some suggestions:

- Use awareness activities with students so they can identify the bias in books.
- Have activities for students to rewrite or change parts of the books.
- Supplement the texts with articles, other books, speakers, etc.
- Check with WEEA-funded projects for materials related to the subject area.
- Write to publishers insisting that they change the particular books if required for the subject.

3.13 Question:

How can a teacher deal with historical materials (e.g., Shakespeare, playwrights, government documents) that are sexists in terms of current awareness?

Answer:

Place them in historical context and discuss them. Try to find some authors or playwrights who examined and commented on sex roles in their day.

4. Case References

The First Amendment exempts the area of curriculum materials and textbooks from Title IX.

See California Education Code.

5. Suggested Documentation

5.1 SEAs

- SEA self-evaluation
- Records regarding inservice efforts
- State Board action
- Records from needs assessment and program evaluation
- Reports of site visits
- Files on recommendations for textbook changes
- Resource library of best available materials
- Records of dissemination to LEAs (keep feedback forms)

5.2 LEAs

- Self-assessment
- Needs assessment, both pre and post assessment
- Records of changes recommended
- Document meetings and inservice
- New policies passed since self-assessment
- Evaluations of inservice (participant feedback)
- Copies of pre and post assessment and analyses of inservice found in the annual report

XVIII. Review Procedures

A. Strategy for providing maximum coverage of Title IX -- In order to draw school districts attention to the enforcement of Title IX, whenever a review is scheduled, whether Title VI, 504, ESAA, Title IX, Migrant, Lau, or other, the LEA should be asked to submit, along with the other information being requested, copies of publications of the notification of its nondiscriminatory policy as required by Section 86.9(a) (1-2) of the final Title IX regulation.

B. Data collection and Analysis -- While the items suggested in this manual for data collection are numerous, they should not be considered all-inclusive or limiting. You may find that additional data or questions are necessary for making a determination of compliance or non-compliance. Try, however, to keep the data collection burden of the LEA to the absolute minimum necessary for a sound assessment of the recipient's compliance status.

Key data should be collected and analyzed prior to any on-site review. Basically the tools of analysis to be employed are those you are already using in developing a case on in-school discrimination on the basis of race, color or national origin, i.e., determining whether there are patterns of differential treatment. (Of course, whenever such patterns are found, the recipient should be asked for an explanation before final conclusions are drawn.) It may nevertheless be useful to provide a few pointers in some of the areas which must receive OCR attention.

1. Employment - Scrutinize job descriptions and titles carefully. Are titles and salaries for essentially the same work differentiated on the basis of sex? Do only or primarily members of one sex work during hours that entitle them to extra pay, e.g., night maintenance staff as opposed to day maintenance staff? Are both the Vocational Agriculture and Home Economics teachers (making the sexist assumption that they are of different genders) paid for 11 months work?

2. Course Offerings - Do neutral gender terms such as "the student"" connote in the context of other course descriptions that the course is intended for members of one sex only? Do titles or descriptions of activities indicate courses are designed for participation by members of one sex?

3. Student handbooks often point to specific practices, activities, and requirements that are differentiated on the basis of sex. Faculty handbooks may also provide information in this regard.

4. Curriculum guides - Do they suggest different activities on the basis of sex?

C. On-Site Reviews -- On-site reviews should focus primarily on interviewing community contacts, school officials and students; observing facilities and services; and observing treatment of students in the school setting (in classrooms, lunch room, at recess on the playground) to determine whether they are being treated differently on the basis of their sex.

During the on-site review, school officials should be asked for explanations of inequitable patterns that you have found through analysis of data previously collected as well as for explanations of apparent inequities you have observed on-site.

Interviews with complainants, representatives of advocacy groups and other community contacts should occur as early as possible during the on-site review. They often provide leads to pertinent data that should be requested from school officials. In addition, allegations made by complainants or other contacts should be checked immediately with school officials. Where there is a discrepancy between that reported to you by the complainant and that reported by the LEA, the complainant should be told of the LEA's report and given an opportunity to disagree with it.

D. Remedies -- Some violations require immediate correction -- usually where there are injured parties, as with discriminatory rates of pay, promotions or job selections, and with exclusio of students from courses they have requested. In the case of the latter, not only must the student be admitted immediately to the course but he or she must be provided with whatever assistance is necessary to make up for the time lost. Where appropriate, in instances of employment discrimination, back pay should be required from either June 23, 1972, or the date of the "injury," whichever is the later.

Other violations will require both immediate redress to injured parties and other, more long-range action to prevent recurrence of the violation or further discrimination. For example, not only must a student excluded from a class be admitted immediately, but steps must also be taken to notify all persons (teachers, counselors, parents and other students) that all courses are open to both sexes, including prominent notices and, if necessary, revised course descriptions and content. In addition, the recipient must implement specific steps designed to encourage enrollment by students in specific courses or programs form which they were previously excluded on the basis of their sex.

In other instances, such as discontinuing separate physical education classes, time may be allowed for changes in scheduling and course revisions. In general, use your judgment about what can reasonably and feasibly be required within a given time period, given a particular set of curcumstances peculiar to an individual school district.

E. Letters of Findings -- Be sure to point out that Title IX was enacted on June 23, 1972 and that copies were sent to all Chief State School Officers and local school district superintendents in February 1973. Also indicate that the final implementing regulation for Title IX was published in the Federal Register on June 4, 1975, copies of which were sent to all Chief State School Officers and local school district superintendents shortly thereafter, and it became effective on July 21, 1975.

Letters of findings should be specific in outlining violations and should quote or at least cite the appropriate section(s) of the regulations to which the violations are tied. They should also outline the nature of the corrective acti or remedies required, indicating those demandin immediate action and those for which a plan and timetable are necessary. In addition to pointin out what is wrong, they should also take cognizance of what is right. Specify a date by which a response is expected. In most cases, 45 days from the date of the letter should be allowe

When a review has addressed only a few specific issues, as in a complaint investigation, and an LEA has taken action to resolve those issues, do not say that the action taken brings it into full compliance with Title IX, but rather that the action taken "resolves the Title IX issue addressed in our review." In such cases, include a paragraph such as the following:

> As you know, our review of your school district focused only on curriculum offerings at the junior and senior high schoo levels. If situations exist in other respects or at other levels in which students or employees are subjected to differential treatment on the basis of sex, they too would be in violation of Title IX and sho be corrected. I urge you, therefore, to review all your practices and policies to determine the extent to which they conform to the requirements of the final regulation implementing Title IX, an additional copy of which is enclosed for your convenience.
>
> Your particular attention is called to requirements for:
>
> 1. Self-evaluation (Section 86.3(c-d))
>
> 2. Designation of responsible employee and adoption of grievance procedures (Section 86.3)
>
> 3. Dissemination of Policy (Section 86.9)
>
> In letters of findings for reviews conducte prior to publication of the final regulatio the language above should be adapted to state: "As you know, our review of your school district was conducted prior to the publication of the final regulation imple menting Title IX."

The following is a sample letter of findings:

Dear Superintendent _______________:

Thank you for the cooperation extended to members of my staff during their visit to your school district from September 9 to 13 to investigate a complaint alleging that the operation of the education program in Education County is discriminatory on the basis of sex.

In view of the issuance of the final regulation implementing Title IX of the Education Amendments of 1972, which became effective on July 21, 1975, it seems appropriate to advise you of our findings at this time so that your district may take whatever corrective action is necessary as expeditiously as possible. Enclosed for your convenience is an additional copy of the final Title IX regulation which was sent to you shortly after its publication on June 4, 1975.

> A copy of Title IX of the Education Amendments of 1972, which was enacted June 23, 1972, was sent to you in Febraury 1973. Section 901 provides that:
>
> No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance...

Based on the data gathered during our review, we have concluded that certain policies and practices of your school district are discriminatory on the basis of sex and therefore in contravention of Title IX.

Specifically we found:

A. Discrimination on the basis of sex occurs in the recruitment and selection, promotion and payment of administrative staff.

During the course of our review, we determined that the Education County School District has no published objective selection criteria nor any qualifications set forth for administrative staff. The data provided us indicate that most administrative positions are filled by persons holding teaching positions in the district, and th the amount of previous teaching experience has some bearing on promotion to an administrative post. Specifically, although women held 79 percent of the 925 full-time teaching positions in your district, they held only 17 percent of the 65 administrative positions. We also found that there were 10 male and eight female applicants for the three junior high school principalship vacancies in your district last year. Of the female applicants, all eight had at least 12 years previous teaching experience, with an average of 14.3, and six had master's degrees, including one who had 30 hours beyond her master's and 18 years previous experience. The number of years previous teaching experience of the male candidates ranged from three to 14 years, with an average of 6.1, and five had master's degrees. Yet only males were selected for the three principalships, one of whom did not have a master's degree but 10 years of previous teaching experience, and two of whom had master's degrees, one with three years previous teaching experience and the other wi seven. These data indicate a pattern of hiring women but failing to promote them to administrative positions at the same rate as their male counterparts in contravention of Section 86.51 of the final regulation.

In addition, we found that although the Education County School District does not advertise administrative staff openings, it does seek recommendations of candidates for such positions from principals. In our discussions with principals and male and female faculty members, we found that principals had informed only male faculty members of the openings and that female applicants had learned of the openings through a less formal grapevine. Specifically, seven of the 10 male applicants for the positions had been informed of the openings by their buildi principals and told that they would be recommended for an administrative post by their building principals; none of the female applicants had been informed of the openings by their principals, nor did any female appli cant receive an assurance of a recommendatio from her principal. We also interviewed 30 male and 20 female employees who had taken courses in school administration while employed by your school district. Of the 30 males interviewed, 23 had been encouraged to take such courses by their principals. Of the 20 females interviewed, only two had received such encouragement and nine reported that their principal had suggested they pursue training in areas in which there were greater opportunities for women. Thus it appears that female employees are receiving less encouragement than men to prepare for and seek administrative positions in contravention of Sections 86.51 and 86.53 of the final regulation.

In addition, of the five assistant superintendents in your district, four are male and one is female. All are employed on a 12-month basis, full-time; all have master's degrees, and all have between 16 and 20 years experience. The female assistant superintendent, however, receives $2500 less salary per year than her male counterparts and has received between $1200 and $2500 less per year since her appointment in 1967, although two of the four male assistant superintendents were appointed to their positions more recently. Unless your district can show that this discrepancy in salary is not based on sex, this is in violation of Section 86.54 of the final regulation which prohibits distinctions in rates of pay or other compensation on the basis of sex.

B. Discrimination on the basis of sex occurs in course offerings, in violation of Section 86.31(b)(i) and 86.34 of the final regulation.

Specifically we found that all boys in grades seven and eight are automatically assigned to classes in industrial arts, while girls are assigned to classes in home economics. In grades 9-12 we found that some female students had requested courses in auto mechanics, mechancial drawing, and offset printing. Their requests had been denied because, according to the Central and West High School principals and counselors, there were not enough girls interested to make up a separate section of each course and they could not enroll in the other classes beca there would not be room for them without displacing boys who had also requested these courses.

Although the Assistant Superintendent for Secondary Schools told us that all elective courses were open to students of both sexes, we found that the course descriptions in the Secondary School Catalogue sometimes indicate otherwise. For instance, the description of Auto Mechanics 1 (p.47) states, "for this course, boys receive training in..." The description of the second year course in offset printing (p.56) refers to "the student in the initial sentence, but refers to "him" in the concluding sentence. Course descriptions for a few courses (Home and Family Living, Child Care, Home Furnishings, General Crafts, Bookkeeping) specify that "boys and girls are eligible" or "for both boys and girls," while others in the same general categories (Cooking, Clothing Design, Industrial Arts, Business Education) in which enrollment has traditionally been composed of members of one sex, use the terms "he" "the student." Use of these terms under these circumstances tends to imply that members of one sex only are expected to continue to enroll in these courses.

C. Discrimination occurs on the basis of sex in student eligibility to participate in school district sponsored extracurricular activities in violation of section 86.31 of the regulat

During the course of our investigation we ascertained the membership by sex in extracurricular activities and found several that were single-sex in composition: Audio-visual Aides, Home Economics Club, Girls' Chorus, Boy's Glee Club, Stage Crew, Pep Band, and Cheerleaders. We were told that female students do not have sufficient mechancial aptitude to be considered eligible for membership in Audio-visual Aides. Similarly, some of the stage crew activities were said to be too dangerous for female students. The Pep Band is listed as an activity for male students only, while Cheerleaders is open to only female students. The faculty sponsor of the Home Economics Clubs told that no male student had expressed an interest in this activity and the description of this activity in the student handbook did not indicate that participation was limited to members of one sex. Title IX does not prohibit glee clubs or choruses composed of certain voice ranges which may result in membership of one or predominantly one sex. It does prohibit limiting membership on the basis of sex however.

In order to come into compliance with the requirements of Title IX of the Education Amendments of 1972, corrective steps are needed by your school district to:

A. Eliminate the pattern of discrimination shown in employment by:

    1. establishing formal procedures for announcing and publishing position openings, making clear that they are open to all individuals regardless of sex, race, color, or national origin;

    2. making affirmative efforts both to notify potential women candidates of administrative vacancies and to encourage women to apply for such vacancies and obtain the training that would entitle them to favorable consideration;

    3. establishing written, objective, nondiscriminatory criteria for selection for all staff positions.

    4. equalizing salaries which have differed of the basis of sex, including the award of back pay to any individual awarded a lower salary on the basis of sex since passage of Title IX on June 23, 1972.

B. Open participation in all courses to students of both sexes, including:

    1. making immediate provisions for students to receive instruction previously denied them on the basis of sex;

2. notifying all school district personnel, students, parents, and the community generally that all courses are available to both male and female students and that no preference will be given to a student's choice on the basis of her or his sex;

3. developing and implementing specific affirmative steps to interest students in enrolling in courses from which they have previously and traditionally been excluded on the basis of sex;

4. revising course descriptions so that they in no way imply that enrollment by students of one sex is preferred or expected.

C. Eliminate limitations on participation in extracurricular activities that are based on sex by:

   1. immediately admitting students to extracurricular activities who were previously denied membership on the basis of their sex;

   2. notifying all school district personnel, students, parents, and the community generally that all extracurricular activities sponsored by your district are open to both male and female students;

   3. developing and implementing specific affirmative steps to encourage students to participate in extracurricular activities from which they have previously and traditionally been excluded on the basis of their sex;

   4. revising descriptions of extracurricular activities in student handbooks and other

publications to insure that they clearly indicate membership is open to students of both sexes without preference.

Because our review was conducted prior to issuance of the final Title IX regulation, we did not inspect the athletic and physical education programs of your district. I would therefore appreciate your reviewing Sections 86.34(a-d) and 86.41 to determine the extent to which your physical education and athletics programs conform to the requirements of the regulation.

In addition, your particular attention is called to the final regulation's requirements for:

1. Self-evaluation (Section 86.3 (c-d))
2. Designation of responsible employee and adoption of grievance procedures (Section 86.8)
3. Dissemination of Policy (Section 86.9)

I recognize that neither you nor your Board of Education instituted the practices we have identified as violations with the conscious intent of discriminating, and wish to assure you of our full cooperation in assisting your district in complying with the requirements of Title IX.

Please let me know within 45 days of the date of this letter of the specific steps you are taking, as well as a timetable for their implementation, to correct the discrimination outlined above. If you have questions or requests in the meantime, do not hesitate to contact me.

Sincerely yours,

Director, Office for Civil Rights
Region________

XVIII. REVIEW PROCEDURES

1. Suggested Action Steps for SEAs.

- Have on file copies of the notification of its non-discriminatory policy as required by Section 86.9 (a) (1-2) of the final Title IX regulation from all LEAs.
- Have on file self-studies of as many districts as possible.
- Develop an ongoing relationship with the regional O.C.R. office and establish cooperative operating procedures.
- Offer technical assistance to districts being reviewed.
- Provide technical assistance with long-range compliance plan and specific short-term remedial action.

2. Suggested Action Steps for LEAs.

- Retain file copies of the notification of its non-discriminatory policy as required by Section 86.9 (a) (1-2) of the final Title IX regulation.
- Conduct a self-study including:
  - a. job descriptions
  - b. salary schedules
  - c. curriculum
  - d. master schedules for classified and certified personnel
  - e. catalog of course offerings
  - f. students and faculty handbook
  - g. curriculum guides
  - h. facilities used
  - i. student activities schedules
- Retain on-site review documents.
- Identify the contact person(s).
- Request technical assistance prior to on-site review by O.C.R.
- Establish advisory committees.

- Review complaint report and make necessary corrections, replies, redress, and long-range action plans.
- Implement specific steps to correct inadequacies.

3. Questions & Answers

3.1 Question:

Who enforces Title IX?

Answer:

This is the responsibility of the Office for Civil Rights (O.C.R.).

4. Case References

No case law at this time.

5. Suggested Documentation

5.1 SEAs

- Records of all activities undertaken.

5.2 LEAs

- Records of all activities undertaken.

CALIFORNIA STATE DEPARTMENT OF EDUCATION
QUESTION/ANSWER WORKSHEET
PROJECT S.E.E.
TITLE IX TECHNICAL ASSISTANCE SEMINAR

SECTION ____________________

QUESTION (3):

ANSWER:

COMPLETE THIS FORM WITH ADDITIONAL QUESTIONS AND ANSWERS FOR THE SECTION NOTED. SEND TO:

Barb Landers
721 Capitol Mall - Room 544
Sacramento, CA. 95814

D
E ____________________
UAI ____________________